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No. 27] NEW DELHI, JUNE 28—JULY 4, 2015, SATURDAY/ASADHA 7—ASADHA 13, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)
नई दिल्ली, 25 जून, 2015

का.आ. 1314.—दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार श्री कंवर पाल सिंह एवं श्री सुशील नेगी, अभियोजन अधिकारी, केन्द्रीय अन्वेषण ब्यूरो को न्यायालयों में दिल्ली विशेष पुलिस स्थापना द्वारा प्रारंभ किए गए मामलों के संचालन के लिए तथा किसी राज्य अथवा संघ शासित क्षेत्र, जिसमें उपर्युक्त धारा के प्रावधान लागू होते हैं, में कानून द्वारा स्थापित परिशोधन अथवा अपीलीय न्यायालयों में अपीलों, संशोधनों अथवा इन मामलों से उत्पन्न होने वाले अन्य मामलों का संचालन करने के लिए विशेष लोक अभियोजन के रूप में नियुक्त करती है।

[फा. सं 225/63/2014-एवीडी-II]
अजीत कुमार, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 25th June, 2015

S.O. 1314.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby

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appoints Shri Kanwar Pal Singh and Shri Sushil Negi, Prosecuting Officers, Central Bureau of Investigation, as Special Public Prosecutors for the conduct of cases instituted by the Delhi Special Police Establishment in trial courts, and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts; established by law in any State or Union Territory to which the provisions of the aforesaid section apply.

[F.No. 225/63/2014-AVD-II]

AJIT KUMAR, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 29 जून, 2015

का.आ. 1315.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारतीय रिजर्व बैंक के साप्ताहिक लेखे के फार्म से संबंधित पिछली सभी अधिसूचनाओं के अधिक्रमण में, केन्द्रीय सरकार, एतद्वारा, उस फार्म को अधिसूचित करती है जिसमें भारतीय रिजर्व बैंक केन्द्र सरकार को साप्ताहिक लेखे प्रेषित करेगा, नामतः

(2819)

फार्म 'क'

[भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 53 (1)]

भारतीय रिजर्व बैंक

..... को समाप्त सप्ताह के लिए लेखा

(राशि बिलियन रुपए में)

देयता	समय-सीमा	पिछला वर्ष	चालू वर्ष	आस्तियां	समय-सीमा	पिछला वर्ष	चालू वर्ष
पूँजी आरक्षित निधि अन्य आरक्षित जमाराशियां अन्य देयताएं एवं प्रावधान				बैंकिंग विभाग (बीडी) की आस्तियां नोट, रुपया सिक्का, छोटा सिक्का, स्वर्ण सिक्का और बुलियन निवेश-विदेशी-बीडी निवेश-घरेलू-बीडी खरीदे और भुनाए गए बिल ऋण और अग्रिम अनुषंगियों में निवेश अन्य आस्तियां			
निर्गम विभाग की देयता जारी किए गए नोट				निर्गम विभाग (आईडी) की आस्तियां स्वर्ण सिक्के और बुलियन (नोट निर्गम के समर्थन के रूप में) रुपया सिक्का निवेश-विदेशी-आईडी निवेश-घरेलू-आईडी घरेलू विनिमय पत्र और अन्य वाणिज्यिक पत्र			
कुल देयताएं				कुल आस्तियां			

मुख्य महाप्रबंधक

उप गवर्नर

उप गवर्नर

उप गवर्नर

उप गवर्नर

गवर्नर

[फा० सं० 06/02/2015-बीओ-II]

डॉ० शशांक सक्सेना, आर्थिक सलाहकार (एसएस)

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 29th June, 2015

S.O. 1315.—In exercise of the powers conferred by sub-section (1) of section 53 of the Reserve Bank of India Act, 1934 (2 of 1934) and in supersession of all earlier notifications relating to form of weekly account of the Reserve Bank of India the

Central Government hereby notifies the form in which the Reserve Bank of India, shall transmit a weekly account to the Central Government, namely:—

Form 'A'

[see section 53(1) of the Reserve Bank of India Act, 1934]

RESERVE BANK OF INDIA

An account for the week ending

(Amount in Rs. billion)

Liabilities	Schedules	Previous year	Current year	Assets	Schedules	Previous year	Current year
Capital Reserve Fund Other Reserves Deposits Other Liabilities and Provisions				Assets of Banking Department (BD) Notes, rupee coin, small coin, Gold Coin and Bullion Investments-Foreign-BD Investments-Domestic-BD Bills Purchased and Discounted Loans and Advances Investment in subsidiaries Other Assets			
Liabilities of issue Department Notes issued				Assets of Issue Department (ID) Gold Coin and Bullion (as backing for Note issue) Rupee coin Investment-Foreign-ID Investment-Domestic-ID Domestic Bills of Exchange and other Commercial Papers			
Total Liabilities				Total Assets			

Chief General Manager Deputy Governor Deputy Governor Deputy Governor Deputy Governor Governor

[F.No. 06/02/2015-BO-II]

Dr. SHASHANK SAKSENA, Economic Adviser (SS)

(राजस्व विभाग)
(केन्द्रीय प्रत्यक्ष कर बोर्ड)
नई दिल्ली, 1 जुलाई, 2015

प्रपत्र सं० 3 सीपी

का.आ. 1316.—

1. आवेदक का नाम, पता तथा पेन सं० मैसर्स डीसीएम श्रीराम कोनसोलिटिड लि० नई दिल्ली
पैन:- एएसीडी0097आर
2. कृषि विस्तार परियोजना का नाम शुगर मैन्यूफैक्चरिंग एंड को-जेनरेशन ऑफ पावर
3. कृषि विस्तार परियोजना का प्रयोजन उत्तर प्रदेश राज्य में अजबापुर, रुपापुर, हरियावन व लोनी में चीनी यूनिट क्षेत्रों में किसानों को सर्वोत्तम प्रक्रिया से अवगत कराके व नई/उन्नत प्रौद्योगिकी को अपनाकर गन्ना उत्पादकता में सुधार करना
4. आवेदन की संदर्भ संख्या और तिथि फा०सं० 203/20/2015-आ०क०नि-II, दिनांक 14.05.2015 को प्राप्त हुई।
5. कृषि विस्तार परियोजना को आरंभ करने की तिथि पहले ही आरंभ की जा चुकी है। तथापि, अनुमोदन आयकर अधिनियम, 1961 की धारा 35 गगन के तहत औपचारिक अधिसूचना जारी होने की तारीख से ही प्रभावी होगा।
6. कृषि विस्तार परियोजना की माह के हिसाब से अवधि चल रही परियोजना।
7. कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं) अधिसूचना के विविध जारी होने की तारीख से 31.3.2016 तक।
8. कृषि विस्तार परियोजना पर होने वाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से भिन्न) निर्धारण वर्ष 2013-14, 2014-15 और 2015-16 के लिए, आवेदक ने क्रमशः 2,99,00,000 रु० 4,62,00,000 रु० और 5,57,00,000 रु० के व्यय का दावा किया है। तथापि वित्त वर्ष 2013-14 और 2014-15 के संबंध में, धारा 35 गगन के तहत दावा अनुमत नहीं है क्योंकि भारत कटौती को अधिसूचना के विधिवत जारी होने की तारीख से ही अनुमत किया जा सकता है। जबकि वित्त वर्ष 2015-16 के लिए संभावित व्यय 5,57,00,000 रु० से कम होगा।
9. कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो, शून्य
10. वे शर्तें जिनके अधीन (शुगर मैन्यूफैक्चरिंग एंड को-जेनरेशन ऑफ पावर) नाम से कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है, निम्नानुसार हैं:—
 - (i) कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगन की उपधारा (1) के अंतर्गत अधिसूचित कृषि विस्तार परियोजना की लेखाबहियां पृथक रूप से रखेगी तथा ऐसी लेखाबहियों की धारा 288 की उपधारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी।
 - (ii) उपनियम (1) में उल्लिखित लेखा परीक्षा में लेखा-परीक्षक की कृषि विस्तार परियोजना के संबंध में अनुरक्षित लेखाबहियों के सही और उचित होने के संबंध में की गई टिप्पणियां, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये जाने अथवा नियमों अथवा नियम 6 ककघ के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा शर्तों को पूर्ण किए जाने के संबंध में टिप्पणियां शामिल होंगी।
 - (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा ऐसे प्रशिक्षण, शिक्षा अथवा मार्गदर्शन हेतु वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अंतर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी।
 - (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगन के उपबंधों, नियम 6 ककघ और इस नियम के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी। अनुमोदित संस्था अपनी कृषीय विस्तार परियोजना/कार्यकलाप/योजना को अपने उत्पादों के ब्रांड नाम पर नहीं रखेगी।

- (v) आवेदक परियोजना से लाभांशित किसानों की डाटाशीट को कृषि मंत्रालय को भेजेगा। इसके अतिरिक्त आवेदक मिट्टी (सोइल) हेल्थ से संबंधित डाटा भी साझा करेगा और कृषि मंत्रालय के पास उपलब्ध मिट्टी टेस्टिंग प्रयोगशाला की अतिरिक्त क्षमता की उपलब्धता के संबंध में सूचना भी प्रदान करेगा।
- (vi) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (किसी भूमि या भवन की लागत स्वरूप का व्यय न होने पर) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे;
- परन्तु यह कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।
- (vii) जहां अधिनियम की धारा 35 गग के अंतर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अंतर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर-निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
- (viii) अनुमोदित संस्था द्वारा धारा 139 की उप-धारा (1) के अंतर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व निम्नलिखित सूचना क्षेत्राधिकार पीसीआईटी/सीआईटी/पीडीआईटी/डीआईटी, जैसा भी मामला हो, को भी प्रस्तुत करेगी, नामतः—
- (क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गगग की उप-धारा (1) के अंतर्गत दावा की गई कटौती की राशि;
- (ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना के कार्यक्रम के संबंध में एक टिप्पणी और ऐसे कार्यक्रम हेतु वित्तीय आबंटन; तथा
- (ग) कर-निर्धारिती द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।
- (ix) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर अल्प सत्र को छोड़कर केवल उत्पाद निष्प्रभावी प्रशिक्षण दिया जाएगा। इसके अतिरिक्त परियोजना के तहत लाभांशित किसानों को किसी भी चीनी फैक्टरी को गन्ना सप्लाई करने की सुविधा होगी।
11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था:—
- (क) अपने क्रियाकलाप बंद कर देती हैं; अथवा
- (ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा
- (ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा
- (घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अध्वधीन अधिसूचना जारी की जा रही है।
- स्थान: नई दिल्ली,
दिनांक: 26.2.2015

[अधिसूचना सं० 52/2015/फा० सं० 203/20/2015-आ०क०नि०-II]

रोहित गर्ग, उप सचिव

(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 1st July, 2015

FORM NO. 3CP

S.O. 1316.—

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|---|---|
| 1. Name, address and PAN of the applicant | M/s. DCM Shriram Consolidated Limited, New Delhi.
PAN: AAACD0097R |
| 2. Title of the agricultural extension project | Sugar manufacturing & Co-generation of Power |
| 3. Purpose of the agricultural extension project | To improve sugarcane productivity by educating farmers of beset practices and adopting new/advanced technologies in area of sugar units at Ajbapur, Rupapur, Haridwan & Loni in the state of UP |
| 4. Reference No. and date of application | F.No. 203/20/2015-ITA. II received on 14.05.2015. |
| 5. Date of commencement of the agricultural extension project | Already commenced. However, approval shall be effective from the date of issue of formal Notification u/s 35CCC of the Income-tax Act, 1961 (Act) |

6. Duration of the agricultural extension project in months	On going project.
7. Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years)	From date of formal issue of Notification till 31.03.2016
8. Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building)	For F.Yr's 2013-14, 2014-2015 and 2015-16 applicant has claimed expenses of ` 2,99,00,000/-, ` 4,62,00,000/- and ` 5,57,00,000/- respectively. However, as far as F. Yr. 2013-14 and 2014-15 are concerned, claim u/s 35CCC is not allowable as weighted deduction can be allowed only from date of formal issue of notification. While for F. Yr. 2015-16, likely expenditure would be less than ` 5,57,00,000/-
9. Amount, if any, to be charged from each beneficiary of agricultural extension project	NIL
10. Conditions subject to which agricultural extension project titled "Sugar manufacturing & Co-generation of Power' is being notified are as under:	additional capacity of Soil Testing Laboratory available with Ministry of Agriculture.
i. The approved entity undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of accounts audited by an accountant as defined in the Explanation below sub-section (2) of section 288.	vi. All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC; Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.
ii. The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfilment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.	vii. Where a deduction under this Ection 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such expenditure under any other provisions of the Act for the same or any other assessment year.
iii. The approved entity shall not accept any amount from the beneficiaries under the eligible agricultural extension project or training, education, guidance or for any material so distributed for the said purposes.	viii. The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the jurisdictional PCIT/CIT/PDIT/DIT, as the case may be namely:—
iv. The approved entity shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD of I.T. Rules, 1962 and this Notification. The approved entity shall also not name any of their agricultural extension project/activity/scheme on the brand name of any of their products.	(a) the audited statement of accounts of the agricultural extension project for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;
v. The applicant shall furnish data sheet of farmers who have benefitted from the project to the Ministry of Agriculture. Further, the applicant shall also share the data pertaining to Soil Health and also provide information regarding availability of	(b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and (c) a certificate from the Ministry of Agriculture, Government of India, regarding the

genuineness of the agricultural extension project undertaken by the assessee during the previous year.

- ix. Under the project only product neutral training will be given except a short session on company's profile and products. Further, the farmers benefitted under the project will have the privilege of supplying their produce to any other entity.

11. The Central Board of Direct Taxes shall withdraw the approval if the approved entity:—

- (a) has ceased its activities; or

- (b) its activities are not genuine; or
(c) its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or
(d) its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

Place: New Delhi

Dated: 26/06/2015

[Notification No. 52/2015/F.No. 203/20/2015-ITA. II]

ROHIT GARG, Dy. Secy.

नई दिल्ली, 1 जुलाई, 2015

प्रपत्र सं० 3 सीपी

का.आ. 1317.—

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| 1. आवेदक का नाम, पता तथा पेन सं० | मैसर्स मेरिको लि०, मुम्बई, पैन-एएसएम 7493 जी |
| 2. कृषि विस्तार परियोजना का नाम | कुसुम्भ (सैफलाउर) कृषिय विस्तार परियोजना |
| 3. कृषि विस्तार परियोजना का प्रयोजन | उपज को बेहतर करना व साथ ही सैफलाउर फसल की खेती क्षेत्र में वृद्धि करना |
| 4. आवेदन की संदर्भ संख्या और तिथि | फा०सं० 203/21/2015 आ०क०नि०-II, दिनांक 15.05.2015 को प्राप्त हुआ |
| 5. कृषि विस्तार परियोजना को आरंभ करने की तिथि | पहले ही आरंभ की जा चुकी है। तथापि, अनुमोदन आयकर अधिनियम, 1961 (अधिनियम) की धारा 35 गगग के तहत इस औपचारिक अधिसूचना जारी होने की तारीख से प्रभावी होगा |
| 6. कृषि विस्तार परियोजना की माह के हिसाब से अवधि | चल रही परियोजना |
| 7. कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं) | अधिसूचना के औपचारिक रूप से जारी होने की तारीख से कर-निर्धारण वर्ष 2018-19 तक |
| 8. कृषि विस्तार परियोजना पर होने वाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से भिन्न) | आवेदक ने निर्धारण वर्ष 2015-16, के लिए प्रत्येक वर्ष के लिए 2,52,49,214/- ₹ के खर्च का दावा किया है। तथापि, क्योंकि परियोजना को अनुमोदन वित्त वर्ष 2015-16 में परवर्ती तिथि से दिया जा रहा है। अतः संगत अवधि हेतु संभावित व्यय काफी कम होगा, जहां तक वित्त वर्ष 2016-17 व 2017-18 का संबंध है, संभावित व्यय क्रमशः 3,02,99,056/- ₹ और 3,63,58,868/- ₹ है। |
| 9. कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो, | शून्य |
| 10. वे शर्तें जिनके अधीन उपर्युक्त कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है, निम्नानुसार हैं:— | परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी। |
| (i) कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगग की उप-धारा (1) के अन्तर्गत अधिसूचित कृषि विस्तार परियोजना की लेखाबहियां पृथक् रूप से रखेगी तथा ऐसी लेखाबहियों की धारा 288 की उप-धारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा | (ii) उपनियम (1) में उल्लिखित लेखा परीक्षा में लेखा-परीक्षक की कृषि विस्तार परियोजना के संबंध में अनुरक्षित लेखाबहियों के सही और उचित होने के संबंध में, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये जाने अथवा नियमों अथवा नियम 6 ककघ के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा |

- शर्तों को पूर्ण किए जाने के संबंध में की गई टिप्पणियां शामिल होंगी।
- (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा उक्त प्रयोजनों के लिए ऐसे वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अन्तर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी।
- (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगग के उपबंधों, आयकर नियमावली 1962 के नियम 6 ककघ और इस अधिसूचना के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी। अनुमोदित संस्था अपनी कृषि विस्तार परियोजना/कार्यकलाप/योजना को अपने उत्पादों के ब्रांड नाम पर नहीं रखेगी।
- (v) आवेदक किसानों जिनको परियोजना से लाभ हुआ है कि डाटाशीट कृषि मंत्रालय को भेजेगा।
- (vi) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (कंपनी के नियमित कार्मिकों के वेतन व्यय और किसी भूमि या भवन की लागत स्वरूप का व्यय के सिवाय) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे; बशर्ते यह कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।
- (vii) जहां अधिनियम की धारा 35 गग के अन्तर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अन्तर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
- (viii) अनुमोदित संस्था द्वारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व क्षेत्राधिकार पीसीआईटी/सीआईटी/पीडीआईटी/डीआईटी को, जैसा भी मामला हो, निम्नलिखित सूचना भी प्रस्तुत करेगी, नामतः—
- (क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गगग की उप-धारा (1) के अन्तर्गत दावा की गई कटौती की राशि;
- (ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना के कार्यक्रम के संबंध में एक टिप्पणी और ऐसे कार्यक्रम हेतु वित्तीय आबंटन; तथा
- (ग) कर-निर्धारिती द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।
- (ix) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर अल्प सत्र को छोड़कर केवल उत्पाद निष्प्रभावी प्रशिक्षण दिया जाएगा। इसके अतिरिक्त परियोजना के तहत लाभान्वित किसानों को अपनी रुचि की संस्था से सैफलाउट बीजों को सप्लाई करने का अधिकार होगा।
11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था:—
- (क) अपने क्रियाकलाप बंद कर देती है; अथवा
- (ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा
- (ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा
- (घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अध्याधीन अधिसूचना जारी की जा रही है।
- स्थान: नई दिल्ली,
दिनांक 26/06/2015
[अधिसूचना सं० 53/2015/फा०सं० 203/21/2015-आ०क०नि० II]
रोहित गर्ग, उप सचिव

New Delhi, the 1st July, 2015

FORM NO. 3CP

S.O. 1317.—

- | | |
|---|---|
| 1. Name, address and PAN of the applicant | M/s. Marico Limited, Mumbai. PAN: AAACM7493G |
| 2. Title of the agricultural extension project | Safflower Agricultural Extension Project |
| 3. Purpose of the agricultural extension project | To improve the yield as well as increase the area under cultivation of safflower crops. |
| 4. Reference No. and date of application | F.No. 203/21/2015-ITA. II received on 15.05.2015. |
| 5. Date of commencement of the agricultural extension project | Already commenced. However, approval shall be effective from the date of issue of formal Notification u/s 35CCC of the Income-tax Act, 1961 (Act) |

6. Duration of the agricultural extension project in months	Ongoing project
7. Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years)	From date of formal issue of Notification till A.Y. 2018-19
8. Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building)	For F.Yr's 2015-16 applicant has claimed expenses of Rs. 2,52,49,214/. However, as project is being accorded approval from subsequent date in the F.Yr. 2015-16, the expected expenditure for the relevant period would be lesser. As far as F.Yr. 2016-17 and 2017-18 are concerned, likely expenditure is Rs. 3, 02, 99,056/- and Rs. 3, 63, 58,868/- respectively.
9. Amount, if any, to be charged from each beneficiary of agricultural extension project.	NIL
10. Conditions subject to which the above mentioned agricultural extension project is being notified are as under:	<p>building, as reduced by the amount received from the beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC:</p> <p>Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.</p>
i. The approved entity undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of account audited by an accountant as defined in the Explanation below sub-section (2) of section 288.	
ii. The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfilment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.	vii. Where a deduction under this section 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such expenditure under any other provisions of the Act for the same or any other assessment year.
iii. The approved entity shall not accept any amount from the beneficiaries under the eligible agricultural extension project for training, education, guidance or for any material so distributed for the said purposes.	viii. The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the Jurisdictional PCIT/CIT/PDIT/DIT as the case may be, namely:—
iv. The approved entity shall not get any direct or indirect from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD of the I.T. Rules, 1962 and this Notification. The approved entity shall also not name any of their agricultural extension project/activity/scheme on the brand name of any of their products.	(a) the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;
v. The applicant shall furnish data sheet of farmers who have benefitted from the project to the Ministry of Agriculture.	(b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and
vi. All expenses other than salary expenditure of regular employees of the company and expenditure in the nature of cost of any land or	(c) a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.

ix. Under the project only product neutral training will be given except for a short session on company's profile and products. Further, the farmers benefitted under the project will have the right to supply Safflower seeds to entity of their choice.

(c) its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or

(d) its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

11. The Central Board of Direct Taxes shall withdraw the approval if the approved entity:—

Place: New Delhi

Dated: 26/06/2015

(a) has ceased its activities; or

[Notification No. 53/2015/F. No. 203/21/2015-ITA.II]

(b) its activities are not genuine; or

ROHIT GARG, Dy. Secy.

नई दिल्ली, 1 जुलाई, 2015

प्रपत्र सं० 3 सीपी

का.आ. 1318.—

1. आवेदक का नाम, पता तथा पैन सं०
2. कृषि विस्तार परियोजना का नाम
3. कृषि विस्तार परियोजना का प्रयोजन

मैसर्स अवन्ति फीड्स लि०, हैदराबाद, पैन-एएबीसीए 7365ई

अवन्ति एक्वा कल्चर ट्रेनिंग एंड डेवलपमेंट सेंटर

- फीड कन्वर्जन रेशो (एफसीआर) को बढ़ाने के बारे में किसानों को शिक्षित करना और बेहतर औसत दैनिक वृद्धि (एडीजी) होना;
- अच्छी तालाब (पॉन्ड) प्रक्रियाओं पर इन्हें शिक्षित करना ताकि उत्तरजीविता दर में वृद्धि हो और अधिक आय सुनिश्चित हों।
- यंत्रीकरण के लाभों और विश्व भर में झींगी (श्रिम्प) फार्मिंग के नवीनतम विकास पर किसानों को शिक्षित करना

4. आवेदन की संदर्भ संख्या और तिथि
5. कृषि विस्तार परियोजना को आरंभ करने की तिथि

फा०सं० 203/22/2015 आ०क०नि०-II, दिनांक 27.05.2015 को प्राप्त हुआ।

पहले ही आरंभ की जा चुकी है। तथापि, अनुमोदन आयकर अधिनियम, 1961 (अधिनियम) की धारा 35 गगग के तहत इस औपचारिक अधिसूचना जारी होने की तारीख से प्रभावी होगा।

6. कृषि विस्तार परियोजना की माह के हिसाब से अवधि
7. कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं)

चल रही परियोजना

अधिसूचना के विधिवत जारी होने की तारीख से 31.3.2018 तक।

8. कृषि विस्तार परियोजना पर होने वाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से भिन्न)

आवेदक ने वित्त वर्ष 2015-16, 2016-17 और 2017-18 के लिए क्रमशः 7,23,66,000/- रु०; 8,60,35,000रु.- और 10,25,80,750/- रु के व्यय का दावा किया है। तथापि, जहां तक वित्त वर्ष 2015-16 का संबंध है, धारा 35गगग के तहत दावा को कम किया जाएगा क्योंकि भारत कटौती को अधिसूचना के विधिवत जारी होने की तारीख से ही अनुमत किया जा सकता है।

9. कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो,

शून्य

10. वे शर्तें जिनके अधीन 'अवन्ति एक्वा कल्चर ट्रेनिंग एंड डेवलपमेंट सेंटर' नाम से कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है, निम्नानुसार हैं:—

- (i) कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगग की उपधारा (1) के अन्तर्गत अधिसूचित कृषि विस्तार परियोजना की लेखाबहियां पृथक्

- रूप से रखेगी तथा ऐसी लेखाबहियों की धारा 288 की उपधारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी।
- (ii) उपनियम (1) में उल्लिखित लेखा परीक्षा रिपोर्ट में लेखा-परीक्षक की कृषि विस्तार परियोजना के संबंध में अनुरक्षित लेखाबहियों के सही और उचित होने, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये जाने अथवा नियमों अथवा नियम 6 ककच के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा शर्तों को पूर्ण किए जाने के संबंध में की गई टिप्पणियां शामिल होंगी।
- (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अन्तर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी। किसानों के केवल प्रशिक्षण शिक्षा और मार्ग-दर्शन से संबंधित व्यय घटक को ही अनुमत किया जाएगा; इसके अतिरिक्त—
- (क) प्रशिक्षुओं से कोई शुल्क या जमा राशि नहीं ली जाएगी;
- (ख) प्रशिक्षुओं को उक्त विस्तार परियोजना के परिणामस्वरूप कोई प्रमाणपत्र जारी नहीं किया जाएगा;
- (ग) उक्त परियोजना के अंतर्गत भवन/महाविद्यालय/प्रशिक्षण संस्थान के रूप में किसी भी स्थायी ढांचे का निर्माण नहीं किया जाएगा;
- (घ) आवेदक इस परियोजना के लिए किसी भी विश्वविद्यालय से सम्बद्ध नहीं किया जाएगा।
- (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगग के उपबंधों, आयकर नियमावली, 1962 के नियम 6 ककच और इस नियम के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी। अनुमोदित संस्था अपनी कृषीय विस्तार परियोजना कार्यकलाप/योजना को अपने उत्पादों के बांड नाम पर नहीं रखेगी। इसके अलावा अंतर्राष्ट्रीय एक्मोजर विजिट से जुड़े खर्च निम्नलिखित शर्तों के अध्वयधीन होंगे:—
- (क) केवल किसानों के प्रशिक्षण, शिक्षा और मार्गदर्शन से विशिष्ट और अनन्य रूप से संबंधित व्यय के अंगों को अनुमत किया जाएगा;
- (ख) किसी एक व्यष्टिगत किसान को केवल एक ही विदेशी प्रशिक्षण दिया जा सकता है अर्थात् किसी व्यष्टिगत किसान को एक बार विदेश में प्रशिक्षण मिलने पर वह बाद के नामांकन हेतु पात्र नहीं रहेगा;
- (ग) विदेशी प्रशिक्षण, कंपनी के कारोबार से भिन्न सामान्य स्वरूप का होगा;
- (घ) प्रशिक्षण के नाम पर कंपनी के उत्पाद के किसी डीलर/रीटेलर, कंपनी के कर्मचारी या उत्पाद की मार्केटिंग से जुड़े व्यक्तियों को विदेश नहीं भेजा जाएगा;
- (ङ) किसानों को उनके प्रचालन की मात्रा से निरपेक्ष रहते हुए यादृच्छिक रूप से किए गए चयन के अनुसार उन्हें प्रशिक्षण के लिए भेजा जाएगा;
- (च) इस अनुमोदन के मान्य रहने की अवधि के दौरान प्रत्येक परिवार से केवल एक ही व्यक्ति विदेश में प्रशिक्षण पाने हेतु पात्र होगा;
- (छ) विदेशी दौरे पर जाने की तैयारी के संबंध में खर्च होने वाला खर्च आवेदक द्वारा नहीं उठाया जाएगा।
- (v) आवेदक कृषि मंत्रालय को उन किसानों की डेटाशीट प्रस्तुत करेगा जो इस परियोजना से लाभान्वित हुए हैं।
- (vi) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (किसी भूमि की लागत के स्वरूप का व्यय न होने पर) (पोखर की लागत या पट्टे का किराया, खुदाई की लागत, आउटलेट तथा कैंटर्वाक खर्चों सहित) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे:
- बशर्ते यह है कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है, या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।
- (vii) जहां अधिनियम की धारा 35 गग के अन्तर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अन्तर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर-निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
- (viii) अनुमोदित संस्था द्वारा धारा 139 की उपधारा (1) के अन्तर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व आयकर आयुक्त को या आयकर निदेशक को, जैसा भी मामला हो, निम्नलिखित सूचना भी प्रस्तुत करेगी, नामतः—
- (क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गगग की उपधारा (1) के अन्तर्गत दावा की गई कटौती की राशि;

(ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर टिप्पणी तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना का कार्यक्रम और ऐसे कार्यक्रम हेतु वित्तीय आबंटन ; तथा

(ग) कर-निर्धारिती द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।

(ix) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर एक अल्प सत्र को छोड़कर केवल उत्पाद निष्प्रभावी प्रशिक्षण दिया जाएगा।

11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था:—

(क) अपने क्रियाकलाप बंद कर देती है; अथवा

(ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा

(ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा

(घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अधधीन अधिसूचना जारी की जा रही है।

स्थान: नई दिल्ली

दिनांक: 30/6/2015

[अधिसूचना सं० 55/2015/फा०सं० 203/22/2015-आ०क०नि०—II]

रोहित गर्ग, उप-सचिव

New Delhi, the 1st July, 2015

FORM NO. 3CP

S.O. 1318.—

1. Name, address and PAN of the applicant
2. Title of the agricultural extension project
3. Purpose of the agricultural extension project
4. Reference No. and date of the application
5. Date of commencement of the agricultural extension project
6. Duration of the agricultural extension project in months
7. Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years)
8. Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building)
9. Amount, if any, to be charged from each beneficiary of agricultural extension project.

M/s Avanti Feeds Limited, Hyderabad

PAN:-AABCA7365E

Avanti Aqua Culture Training and Development Centre

- To educate farmers about increasing Feed Conversion Ratio (FCR) and have better Average Daily Growth (ADG);
- To educate them on good pond practices so as to increase survival rate and ensure more income;
- To educate farmers on advantages of mechanization and latest developments of shrimp farming across the globe.

F.No. 203/22/2015-ITA.II received on 27.05.2015

Already commenced. However, approval shall be effective from the date of issue of formal Notification u/s 35CCC of the Income-tax Act, 1961 (Act)

Ongoing project

From date of formal issue of Notification till

31.03.2018

For F.Yr's 2015-16, 2016-17 and 2017-18 applicant has claimed expenses of ` 7,2366,000/- ` 8,60,35,000/- and ` 10,25,80,750/- respectively. However, as far as F.Yr. 2015-16 is concerned, claim u/s 35CCC shall be reduced as weighted deduction can be allowed only from date of formal issue of notification.

NIL

10. Conditions subject to which agricultural extension project titled 'Avanti Aqua Culture Training and Development Centre' is being notified are as under:

- (i) The approved entity undertaking agricultural extension project shall maintain separate books

of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of account audited by an accountant as defined in the Explanation below sub-section (2) of section 288.

- (ii) The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfilment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.
- (iii) The approved entity shall not accept any amount from the beneficiaries under the eligible agricultural extension project for training, education, guidance or for any material so distributed for the said purposes. Only the component of expenditure specifically relatable to training, education and guidance of the farmers shall be allowed; In addition:
 - (a) No fees or deposits shall be charged from the trainees;
 - (b) No certificate shall be issued to the trainees as a consequence of the said extension project;
 - (c) No permanent infrastructure in form of building/college/training institute shall be created under the said project;
 - (d) The applicant shall not be affiliated with any university of this project.
- (iv) The approved entity shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of Section 35CCC of the Act, rule 6AAD of I.T. Rules, 1962 and this Notification. The approved entity shall also not name any of their agricultural extension project/activity/scheme on the brand name of any of their products. Further, expenditure related to International Exposure visit shall be subject to the following conditions:
 - (a) Only the component of expenditure specifically and exclusively relatable to training, education and guidance of the farmers shall be allowed;
 - (b) Only one foreign training can be imparted to an individual farmer *i.e.* once foreign training has been given to a individual farmer, he shall be ineligible for subsequent nomination;
 - (c) The foreign training shall be of generic nature unrelated to company's business;
 - (d) No dealer/retailer of company's product, employee of the company or persons associated with marketing of the product shall be send abroad in the name of training;
 - (e) Only the randomly selected farmers shall be send for training irrespective of their scale of operation;
 - (f) Only one person per family shall be eligible for foreign training during the period of validity of this approval;
 - (g) Expenses preparatory to the foreign tour shall not be borne by the applicant.
- (v) The applicant shall furnish data sheet of farmers who have benefitted from the project to the Ministry of Agriculture.
- (vi) All expenses (not being expenditure in the nature of cost of any land [including pond cost or lease rental, excavation cost, outlet and catwalk expenses] or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC;

Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under Section 35CCC.
- (vii) Where a deduction under this section 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such expenditure under any other provisions of the Act for the same or any other assessment year.
- (viii) The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of Section 139, furnish the following to the jurisdictional PCIT/CIT/PDIT/DIT, as the case may be namely:—
 - (a) the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of Section 35CCC;
 - (b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and
 - (c) a certificate from the Ministry of Agriculture, Government of India, regarding

the genuineness of the agricultural extension project undertaken by the assessee during the previous year.

- (ix) Under the project only product neutral training will be given except a short session on company's profile and products. Further, the farmers benefitted under the project will have the privilege of supplying their produce to any other entity.

- (b) its activities are not genuine; or
(c) its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or
(d) its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

Place: New Delhi
Dated: 30/06/2015

11. The Central Board of Direct Taxes shall withdraw the approval if the approved entity:—

[Notification No. 55/2015/F. No. 203/22/2015-ITA.II]
ROHIT GARG, Dy. Secy.

- (a) has ceased its activities; or

नई दिल्ली, 1 जुलाई, 2015

प्रपत्र सं० 3 सीपी

का.आ. 1319.—

- | | |
|--|---|
| 1 आवेदक का नाम, पता तथा पैन सं० | मैसर्स आदित्य बिरला नुवा लिमिटेड, मुम्बई पैन: एएसीआई 1747एच |
| 2 कृषि विस्तार परियोजना का नाम | कृषि विस्तार शिक्षा कार्यक्रम-टोटल एग्री सोल्यूशन प्रोवाइडर |
| 3 कृषि विस्तार परियोजना का प्रयोजन | किसानों को अधिक उपज, गुणवत्ता और लाभ कमाने में सहायता करने के लिए उन्हें मूल्य वर्द्धित सेवाएं उपलब्ध कराना; तथा वॉटर रोड प्रबंधन, ऑर्गेनिक कृषि जैसी विभिन्न तकनीकों को शुरू करके कृषि में स्थिरता को बढ़ावा देना। |
| 4 आवेदन की संदर्भ संख्या और तिथि | फा०सं० 203/23/2015 आ०क०नि०-II, दिनांक 27.05.2015 को प्राप्त हुआ। |
| 5 कृषि विस्तार परियोजना को आरंभ करने की तिथि | पहले ही आरंभ की जा चुकी है। तथापि अनुमोदन आयकर अधिनियम की धारा 35 गगन के तहत इस औपचारिक अधिसूचना जारी होने की तारीख से ही प्रभावी होगा। |
| 6 कृषि विस्तार परियोजना की माह के हिसाब से अवधि | चल रही परियोजना |
| 7 कर-निर्धारण वर्ष (वर्षों) जिनके लिए कृषि विस्तार परियोजना को अधिसूचित किया जा रहा है (तीन वर्षों से अधिक नहीं) | अधिसूचना के औपचारिक रूप से जारी होने की तारीख से कर-निर्धारण वर्ष 2018-19 तक |
| 8 कृषि विस्तार परियोजना पर होने वाले संभावित कुल खर्च (भूमि अथवा भवन की लागत राशि से (भिन्न) | आवेदक ने वित्त वर्ष 2015-16 के लिए 2,73,34,000 रुपए के खर्च का दावा किया है। तथापि, क्योंकि परियोजना को अनुमोदन वित्त वर्ष 2015-16 में परवर्ती तिथि से दिया जा रहा है, अतः संगत अवधि हेतु संभावित व्यय कम होगा। जहां तक वित्त वर्ष 2016-17 और 2017-18 का संबंध है संभावित व्यय 2,95,57,000 रुपये और 3,16,76,000 रुपए होने का अनुमान है। |
| 9 कृषि विस्तार परियोजना के प्रत्येक लाभग्राही से प्राप्त की जाने वाली राशि, यदि कोई हो, | शून्य |

10. वे शर्तें जिनके अधीन 'कृषि विस्तार परियोजना' नाम से शिक्षा कार्यक्रम-टोटल एग्री सोल्यूशन प्रोवाइडर को अधिसूचित किया जा रहा है, निम्नानुसार हैं:—

- (i) कृषि विस्तार परियोजना को शुरू करने वाली अनुमोदित संस्था धारा 35 गगन की उपधारा (1) के अन्तर्गत अधिसूचित कृषि विस्तार परियोजना की लेखा बहियां पृथक् रूप से रखेगी

तथा ऐसी लेखाबहियों की धारा 288 की उपधारा (2) के नीचे उल्लिखित स्पष्टीकरण में यथा परिभाषित किए गए अनुसार किसी लेखाकार से लेखा-परीक्षा कराएगी। इसके अलावा उक्त कृषि विस्तार परियोजना से संबंधित लेखा बही को इस तरीके से अनुरक्षित किया जाएगा ताकि परियोजना में किए जा रहे सभी विस्तार गतिविधियों का सत्यापन किया जा सके।

- (ii) उपनियम (1) में उल्लिखित लेखा परीक्षा रिपोर्ट में लेखा-परीक्षक की कृषि विस्तार परियोजना के सम्बंध में अनुरक्षित लेखावहियों के सही और उचित होने के संबंध में, कृषि विस्तार परियोजना के क्रियाकलापों की वास्तविकता तथा अधिनियम के संगत उपबंधों में विनिर्दिष्ट शर्तों के पूर्ण किये जाने अथवा नियमों अथवा नियम 6 ककष के उपनियम (6) या उपनियम (9) के अंतर्गत जारी अधिसूचना में उल्लिखित नियमों अथवा शर्तों को पूर्ण किए जाने के संबंध में की गई टिप्पणियां शामिल होंगी।
- (iii) अनुमोदित संस्था प्रशिक्षण, शिक्षा, मार्गदर्शन अथवा उक्त परियोजनाओं के लिए ऐसे वितरित की गई किसी सामग्री के लिए पात्र कृषि विस्तार परियोजना के अन्तर्गत किसी लाभग्राही से कोई राशि स्वीकार नहीं करेगी।
- (iv) अनुमोदित संस्था अधिनियम की धारा 35 गगग के उपबंधों, आयकर नियमावली, 1962 के नियम 6 ककष और इस अधिसूचना के अनुसार पात्र व्यय की कटौती के अलावा अधिसूचित कृषि विस्तार परियोजना से कोई प्रत्यक्ष या अप्रत्यक्ष लाभ नहीं उठाएगी।
- (v) परियोजना से लाभ कमाने वाला आवेदक कृषि मंत्रालय को किसानों का डाटाशीट प्रस्तुत करेगा। इसके अलावा, आवेदक मृदा स्वास्थ्य से जुड़े आंकड़ों और मृदा परीक्षण प्रयोगशाला की अतिरिक्त क्षमता की उपलब्धता से संबंधित उपलब्ध सूचना को भी कृषि मंत्रालय के साथ साझा करेगा।
- (vi) लाभग्राही से प्राप्त की गई राशि, यदि कोई हो, को घटाने के बाद सभी खर्च (किसी भूमि या भवन की लागत स्वरूप का व्यय न होने पर) जिन्हें किसी पात्र कृषि विस्तार परियोजना को शुरू करने हेतु पूर्ण तथा अनन्य रूप से खर्च किया गया है, धारा 35 गगग के तहत कटौती के पात्र होंगे; बशर्ते यह कि कृषि विस्तार परियोजना पर खर्च किया गया कोई व्यय जिसकी कर निर्धारिती को किसी व्यक्ति द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से प्रतिपूर्ति की गई है या की जानी है, के लिए धारा 35 गगग के अंतर्गत कोई कटौती नहीं दी जाएगी।
- (vii) जहां अधिनियम की धारा 35 गग के अंतर्गत किसी कटौती का किसी कर-निर्धारण वर्ष हेतु दावा किया जाता है तथा उसे अनुमत किया जाता है तो ऐसे व्यय के संबंध में अधिनियम के किसी अन्य उपबंध के अंतर्गत उसी कर-निर्धारण वर्ष अथवा अन्य किसी कर-निर्धारण वर्ष में कटौती अनुमत नहीं की जाएगी।
- (viii) अनुमोदित संस्था द्वारा धारा 139 की उपधारा (1) के अन्तर्गत आय विवरणी को प्रस्तुत करने की नियत तिथि को या उससे पूर्व आयकर आयुक्त को या आयकर निदेशक को, जैसा भी मामला हो, निम्नलिखित सूचना भी प्रस्तुत करेगी, नामतः—
- (क) लेखा परीक्षा रिपोर्ट के साथ पूर्व वर्ष के लिए कृषि विस्तार परियोजना के लेखाओं के लेखापरीक्षित किए गए विवरण तथा धारा 35 गगग की उपधारा (1) के अन्तर्गत दावा की गई कटौती की राशि;
- (ख) पूर्व वर्ष के दौरान इसके द्वारा शुरू की गई कृषि विस्तार परियोजना पर टिप्पणी तथा चालू वर्ष के दौरान शुरू की जाने वाली कृषि विस्तार परियोजना का कार्यक्रम और ऐसे कार्यक्रम हेतु वित्तीय आबंटन; तथा
- (ग) कर-निर्धारिती द्वारा पूर्व वर्ष के दौरान शुरू की गई कृषि विस्तार परियोजना की वास्तविकता के संबंध में कृषि मंत्रालय, भारत सरकार की ओर से प्रमाणपत्र।
- (ix) इस परियोजना के अंतर्गत कम्पनी की प्रोफाइल और उत्पादों पर एक अल्प सत्र को छोड़कर केवल उत्पाद निष्प्रभावी प्रशिक्षण दिया जाएगा।
11. केन्द्रीय प्रत्यक्ष कर बोर्ड अपना अनुमोदन वापस ले लेगा यदि अनुमोदित संस्था:—
- (क) अपने क्रियाकलाप बंद कर देती है; अथवा
- (ख) इसके क्रियाकलाप अवास्तविक पाए जाते हैं; अथवा
- (ग) इसके क्रियाकलाप अधिनियम के सभी या किसी संगत उपबंधों अथवा नियमों के अनुसार नहीं किए जा रहे हैं; अथवा
- (घ) इसके क्रियाकलाप ऐसी सभी शर्तों अथवा उनमें से किसी भी शर्त के अनुसार नहीं किए जा रहे हैं जिन शर्तों के अध्ययधीन अधिनियम जारी की जा रही है।
- स्थान: नई दिल्ली,
दिनांक 26/6/2015
[अधिसूचना सं० 54/2015/फा०सं० 203/23/2015-आ०क०नि०-II]
रोहित गर्ग, उप सचिव

New Delhi, the 1st July, 2015

FORM NO. 3 CP

S.O. 1319.—

1. Name, address and PAN of the applicant
2. Title of the agricultural extension project

M/s. Aditya Birla Nuva Limited, Mumbai PAN:7AAACI1747H
Agriculture Extension Education Program-Total Agri Solution
Provider

3. Purpose of the agricultural extension project	Provide value added services to help farmers to achieve higher yield, quality and profit; and To promote sustainable agriculture by introducing various techniques such as watershed management, organic farming
4. Reference No. and date of the application	F.No. 203/23/2015-ITA. II received on 27.05.2015
5. Date of commencement of the agricultural extension project	Already commenced, However, approval shall be effective from the date of issue of formal Notification u/s 35CCC of the Income-Tax Act, 1961 (Act)
6. Duration of the agricultural extension project in months	On going project
7. Assessment year(s) for which the agricultural extension project is being notified (not exceeding three years)	From date of formal issue of Notification till A.Y. 2018-19
8. Total expenses likely to be incurred for the agricultural extension project (other than cost of land or building)	For F.Yr's 2015-16 applicant has claimed expenses of Rs. 2,73,34,000 However, as the project is being accorded approval from subsequent date in the F.Yr. 2015-16, the expected expenditure for the relevant period would be lesser. As far as F.Yr. 2016-17 and 2017-18 are concerned likely expenditures are Rs. 2,95,57,000 and Rs. 3,16,76,000.
9. Amount, if any, to be charged from each beneficiary of agricultural extension project.	NIL
10. Conditions subject to which agricultural extension project titled 'Agriculture Extension Education Program-Total Agri Solution Provider' is being notified are as under:	extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD of the IT Rules, 1962 and this Notification. The approved entity shall also not name any of their agricultural extension project/activity/scheme on the brand name of any of their products.
i. The approved entity undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of Section 35CCC, and get such books of account audited by an accountant as defined in the Explanation below sub-section (2) of Section 288 of the Act. Further, the books of accounts pertaining to the said agricultural extension project shall be maintained in a manner as to enable verification of each extension activity being carried out in the project.	v. The applicant shall furnish data sheet of farmers who have benefitted from the project to the Ministry of Agriculture. Further, the applicant shall also share the data pertaining to Soil Health and also provide information regarding availability of additional capacity of Soil Testing Laboratory available with Ministry of Agriculture.
ii. The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfillment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the notification issued under sub-rule (6) or sub-rule (9) of rule 6AAD.	vi. All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC. Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.
iii. The approved entity shall not accept any amount from the beneficiaries under the eligible agricultural extension project for training, education, guidance or for any material so distributed for the said purposes.	
iv. The approved entity shall not get any direct or indirect benefit from the notified agricultural	vii. Where a deduction under this section 35CC of the Act is claimed and allowed for any assessment year, deduction shall not be allowed in respect of

such expenditure under any other provisions of the Act for the same or any other assessment year.

viii. The approved entity shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the jurisdictional PCIT/CIT/PDIT/DIT, as the case may be, namely:—

- (a) the audited statement of account of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;
- (b) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and
- (c) a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.

ix. Under the project only product neutral training will be given except a short session on company's profile and products.

11. The Central Board of Direct Taxes shall withdraw the approval if the approval entity:—

- (a) has ceased its activities; or
- (b) its activities are not genuine; or
- (c) its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or
- (d) its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

Place: New-Delhi

Dated: 26/06/2015

[Notification No. 54/2015/F.No. 203/23/2015-ITA. II]
ROHIT GARG, Dy. Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय
(दूरसंचार विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 30 जून, 2015

का.आ. 1320.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987, 2007 तथा 2011) के नियम 10(04) के अनुसरण में मुख्य महाप्रबंधक दूरसंचार, पंजाब परिमंडल के अंतर्गत वरिष्ठ महाप्रबंधक (सीएमटीएस नोडल सेंटर) कार्यालय, मोहाली, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

2. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से लागू होगी।

[सं ई-11016/01/2015-राजभाषा]

सुरेश चन्द्र शर्मा, उप महानिदेशक (सी एण्ड ए)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

(O. L. SECTION)

New Delhi, the 30th June, 2015

S.O. 1320.—In pursuance of rule 10(4) of the Official Languages (use for official purposes of the Union) Rules, 1976 (as amended 1987, 2007 and 2011), the Central Government hereby notifies the Office of the Principal General Manager (C.M.T.S.-Nodal Centre), Mohali under the administrative control of Chief General Manager Telecom, Punjab Circle, where more than 80% staff have acquired working knowledge of Hindi.

2. This notification shall come into force from the date of its publication in the official Gazette.

[No. E-11016/01/2015-O.L.]

SURESH CHANDRA SHARMA, DDG (C&A.)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 3 जुलाई, 2015

का.आ. 1321.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में उक्त अधिनियम के अधीन उत्तराखण्ड राज्य के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाइनों के लिये सक्षम प्राधिकारी के कार्यों का निर्वहन

करने के लिये श्री बलराज सिंह डांगी, तहसीलदार, हरियाणा सरकार, को प्राधिकृत करती है।

[सं एल-14014/01/2015-जी पी-II]
एस पी अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, 3rd July, 2015

S.O. 1321.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authorizes Shri Balraj Singh Dangi, Tehsildar, Government of Haryana to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within the territory of Uttarakhand State.

[F.No. L-14014/01/15-GP-II]

S. P. AGARWAL, Under Secy.

नई दिल्ली, 3 जुलाई, 2015

का.आ. 1322.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में उक्त अधिनियम के अधीन उत्तर प्रदेश, उत्तराखंड और बिहार राज्य के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाईनों के लिये सक्षम प्राधिकारी के कार्यों का निर्वहन करने के लिये श्री अमर पाल सिंह, डिप्टी कलेक्टर, उत्तर प्रदेश सरकार, को निरस्त करती है।

[फा. सं एल-14014/01/15-जी. पी.-II]

एस. पी. अग्रवाल, अवर सचिव

New Delhi, the 3rd July, 2015

S.O. 1322.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby de-notify Shri Amar Pal Singh, Deputy Collector, Government of Uttar Pradesh to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within Uttar Pradesh, Uttarakhand and Bihar State.

[F.No. L-14014/01/15-GP-II]

S. P. AGARWAL, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 30 जून, 2015

का.आ. 1323.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य बिहार ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचाट संदर्भ संख्या (66/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं एल-12011/97/2004-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th June, 2015

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. -2, Dhanbad as shown in the Annexure in the industrial dispute between the management of Madhya Bihar Gramin Bank and their workmen, received by the Central Government on 30/06/2015.

[No. L-12011/97/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT

Shri Kishori Ram,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE No. 66 OF 2014

PARTIES : Shri Sohan Kr. Gupta,

S/o Shri Ram Pravesh Sah,

Vill & PO: Deohalia, P.S. Ramgarh, Dist: Kaimur

Vs.

The Chairman,

Madhya Bihar Gramin Bank,

H.O.: Meena Plaza, South of Museum, Patna 1.

Order No. L-12011/97/2004-IR(B-1) dt. 16.12.2014

APPEARANCES

One behalf of the workman/Union : None
 On behalf of the Management : None
 State : Bihar
 Industry : Banking

Dated, Dhanbad the 14th May, 2015.

AWARD

The Government of India Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *Vide* their Order No. L-12011/97/2004-IR(B-1) dt. 16.12.2014.

SCHEDULE

"Whether the action of the Management of Madhya Bihar Gramin Bank to terminate the service of workman Shri Sohan Kumar Gupta was correct and valid when he demanded for regularization as a status of a Part Time Sweeper under 1/3rd scale wages of a full time subordinate staff? If not, what relief the workman is entitled for?"

2 Neither workman Sohan Kumar Gupta is present nor any written statement with any documents filed on his behalf. Likewise none appeared on behalf of the Chairman, Madhya Bihar Gramin Bank Patna.-1.

After perusal of the case record, I find the workman had filed a petition with power of Attorney for Mr. Rama Kanta Anand, Advocate under his signature on unscheduled date 24.04.15, and had submitted that he had already filed his I.D. Case No. 10(C) of 2014 under Sec. 2A (1&2) of the Industrial Dispute (Amendment) Act, 2010 before the Industrial Tribunal, Patna, where it has been under progress for adjudication; as such the workman had prayed for the closure of the instant Reference. Under these circumstances, the instant Reference is closed as No Industrial Dispute existing between both the parties. Accordingly, it is passed an order of 'No Dispute Award.'

KISHORI RAM, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट संदर्भ संख्या (31/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं एल-12012/24/2015-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th June, 2015

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 30/06/2015.

[No. L-12012/24/2015-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
 INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
 CHENNAI**

Friday, the 5th June, 2015

PRESENT : K.P. PRASANNA KUMARI

Presiding Officer

Industrial Dispute No. 31/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri M. Selvaraj

.....1st Party/Petitioner

AND

The Deputy General Manager (B&O)

.....2nd Party/Respondent

State Bank of India

Administrative Unit, Kurinji Complex

State Bank Road

Coimbatore-641018

APPEARANCE

For the 1st Party/Petitioner : Absent

For the 2nd Party/Respondent : Sri S. Ravindran,
 S. Bazeer
 Ahmand,
 S. Gomathi
 Lakshmi,
 Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/24/2015-IR (B.1) dated 09.03.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the dismissal from service of Sri M. Selvaraj by the Management of State Bank of India is justified or not? If not, to what relief the workman is entitled to?"

2. On receipt of notice the Respondent has appeared through counsel. The petitioner has been present on the first hearing date and the matter has been posted for filing Claim Statement by the petitioner. But the petitioner has absented himself thereafter. In spite of that the case has been reposted for Claim Statement of the petitioner. He was absent on this reposted date also. He seems to be not interested in pursuing the case. In the absence of the Claim Statement or any other material the reference is answered against the petitioner. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Document Marked:

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	
	नई दिल्ली, 30 जून, 2015	

का.आ. 1325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट संदर्भ संख्या (100/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं० एल-12011/57/2010-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th June, 2015

S.O. 1325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947 of 14), the Central Government hereby publishes the Award (Ref. No. 100/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 30/06/2015.

[No. L-12011/57/2010-IR (B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT LUCKNOW

PRESENT : SHRI RAKESH KUMAR

Presiding Officer

I.D. No. 100/2011

Ref. No. L-12011/57/2010-IR (B-I) dated: 24.05.2011

BETWEEN

Member, National Working Committee

State Bank's Workers Organization

107/76, Jawahar Nagar, Kanpur (U.P.)

(Espousing cause of Shri Rajendera Prasad)

AND

Chief General Manager

State Bank of India, Head Office

Hazratganj, Lucknow.

AWARD

1. By order No. L-12011/57/2010-IR (B-I) dated: 24.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Member, National Working Committee, State Bank's Workers Organization, 107/76, Jawahar Nagar, Kanpur (U.P.) and Chief General Manager, State Bank of India, Head Office, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of management of SBI in not regularizing Shri Rajendera Prasad Yadav from the date of appointment *i.e.* 15.04.97 and not promoting him after completion of 5 years of service is legal and justified? To what relief the workman is entitled?"

3. The case of the workman's union, in brief, is that the workman, Rajendera Prasad Yadav had been appointed as Messenger *w.e.f.* 15.04.1997 and he had been confirmed *w.e.f.* 15.10.1997. It has been alleged by the workman's union that he had been paid 1/3rd of salary although he worked for full time. It is submitted by the union that the management while forwarding his representation for making him full time employee, to the Regional Office *vide* letter dated 29.07.2005 accepted that the workman

is working full time. It is alleged further by the workman's union that other employees junior to the workman were allowed to sit in the examination for promotion after completion of five years of permanent service; whereas he was not allowed; had he been made permanent from 15.04.1997, then he would have got chance to appear in the examination. Accordingly, the workman has prayed that he should be regularized from the date of his appointment *i.e.* 15.04.1997 and be promoted after completion of five years' of service.

4. The management of the State Bank of India has denied the claim of the workman, filing its written statement; wherein it has submitted that the workman had been appointed *w.e.f.* 15.04.1997 on 1/3rd salary and was confirmed on 15.10.97 after completion of six months' probation period. It is submitted by the Bank that on 01.04.2006 all permanent part time employee in 1/3rd scale of pay have been converted as full time employees and accordingly thereafter the workman too was given full pay and he has been promoted from subordinate cadre to clerical cadre *w.e.f.* 23.09.2009. It is also submitted by the Bank that the workman while working on 1/3rd salary had been officiating on other post and was paid accordingly, the officiating allowance, therefore, the allegation of the workman's union that the workman worked for full time and was paid only 1/3rd of salary, stands wrong. The management has submitted that the workman had been promoted on higher post under Rules after completion of requisite period of service; and accordingly, it has prayed that the claim of the workman's union be rejected without any relief to the workman concerned.

5. The workman's union has filed its rejoinder wherein part from reiterating facts already mentioned in the statement claim has submitted nothing new.

6. The workman's union has filed its list of documents dated 06.08.2012 and the management has filed list of documentary in rebuttal *vide* dated 01.10.2012. The workman's union has examined workman; whereas the management examined Sri Mohan Lal Gaur, Branch Manager in support of their respective claim. The parties availed opportunity to cross-examine the each other's witnesses apart from putting oral arguments.

8. Heard learned authorized representatives of the parties at length and perused entire evidence on record.

9. The authorized representative of the workman has contended that the workman was made to work for full time but was paid 1/3rd salary and he was not paid full salary. It is also contended by the union that if the workman would have been permanent from the date of his

appointment 15.04.1997 then he would have been eligible for appearing in the examination for promotion; but the management did not do so, which caused prejudice to the workman; whereas other, juniors were made permanent from earlier dates and were promoted earlier after completion of five years' of permanent services.

10. In rebuttal, the authorized representative of the management has contended that the workman was initially appointed on 1/3rd salary on the post of messenger and was confirmed after six months on completion of his probation. It is also submitted that the bank on 01.04.2006 converted all permanent part time employees in 1/3rd scale of pay into full time employees and accordingly, they were paid full pay, including the workman; likewise he was promoted to clerical cadre from subordinate cadre *w.e.f.* 23.09.2009 under Rules.

11. I have given my thoughtful consideration to the rival submissions of the learned authorized representatives of the parties and scanned entire evidence on record in light thereto.

12. The workman's union has come up with a case that the workman has been appointed as part time messenger on 1/3rd salary but was made to work for full time and was paid 1/3rd salary. The workman's union has taken a stand that the workman should have been made permanent from the date his initial appointment and should be paid full salary as this will have effect on his length of service, making him eligible for promotion in the higher grade as under rules a person with five years permanent service can go through departmental examination for clerical cadre.

13. The management of the State Bank of India, rebutting the claim of the workman's union has come up with a clear cut case that the workman had been appointed on 1/3rd salary and was paid accordingly. It is also the case of the management that the workman was put to officiate on the other post also and for which he was paid officiating allowance, therefore, he is not entitled for teating or making full time workman since his date of appointment as he was made full time at a later date.

14. The workman's union has adduced evidence of the workman who stated in his cross-examination that he was appointed as permanent part time employee *w.e.f.* 31.03.1997 and used to work for 8 hours and under Rules the employee, who works for 8 hours, his promotion became due after five years. He also stated that he had been appointed as part time employee on 1/3rd salary and was confirmed after completion

of 6 months' probation. He also stated that all part time employees of the bank were converted into full time employees under bank's policy *w.e.f.* 01.04.2006. He further stated that there is a circular that a part timer shall be converted into full timer automatically and shall be given benefit of promotion after five years; but he has not filed the same.

The management witness, in his cross-examination, referring paper No. 11/2, stated that the workman had been paid for the extra work duties he performed. He also stated that workman officiated from 18.06.97 to 30.07.2009, intermittently; and was paid accordingly.

15. Admittedly, the workman has been appointed *w.e.f.* 15.04.1997 *vide* letter dated 31.3.1997 as part time employee on 1/3rd scale of pay and was confirmed after completion of his probation period *w.e.f.* 15.10.1997. From perusal of the documentary evidence relied upon by the parties it is evident that the workman was made to officiate the higher post and was paid officiating allowance in lieu thereof. Now the workman has come up with a case that since he worked full time from a previous date therefore he should be treated full time employee from a back date; and this will make him entitled for automatic promotion after completion for 5 years' service. During his cross-examination, the workman has referred to a circular which has provision that a full timer shall be considered for promotion after completion of five years' service; but has not filed the same.

On the contrary, the management has pleaded that the workman was actually officiating and was paid officiating allowance; therefore, he cannot be treated full timer from back date. However, he has been made full timer as per bank policy decision *w.e.f.* 01.04.2006 and is promoted *w.e.f.* 23.9.2009.

16. In 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer Hon'ble Apex Court has observed that initial burden of proof to substantiate its pleadings through cogent evidence, lies upon the workman, thus it was the workman who had to come forward with the documentary evidence in form of some Rule, Regulation or Instruction.

17. Accordingly, in view of law cited above, the burden that lied, upon the workman's union was to come with the evidence that the workman worked for full time and under Rules had been entitled for automatic promotion. But in the present case the workman was appointed as part timer and whatsoever work he had allegedly done as full timer he was paid officiating allowance, therefore, he cannot claim the benefit of a full timer because as per his own admission he was converted into full timer *w.e.f.* 01.04.2006. The workman cannot be treated as full timer

for the period he officiated and received officiating allowance. He cannot be given dual benefit, in the absence of any such Rule.

18. The management has made a specific pleading to the effect that the workman had been engaged as part timer and was made full timer *w.e.f.* 01.04.2006 and further that the workman was given benefit of promotion accordingly seems reliable, particularly in view of evidence that the workman officiated and was paid accordingly.

19. Hence, from the facts and circumstances of the case and discussions made hereinabove; I am of considered opinion that the action of the management of State Bank of India in not making the workman full timer from the date of appointment; and not promoting him after completion of 5 years from the date of appointment *i.e.* 15.04.1997 is neither illegal nor unjustified. Accordingly, I come to the conclusion that the workman, Sri Rajendra Prasad Yadav is not entitled to any relief.

20. The reference under adjudication is answered accordingly.

21. Award as above.

LUCKNOW
03rd June, 2015.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन एफ रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण गुवाहटी के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं एल-41011/83/2011-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th June, 2015

S.O. 1326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947 of 14), the Central Government hereby publishes the Award (Ref. No. 10/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of N.F. Railway and their workmen, received by the Central Government on 30/06/2015.

[No. L-41011/83/2011-IR (B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE**IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, GUWAHATI, ASSAM**

Present: Shri L.C. Dey, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 10 of 2012

In the matter of an Industrial Dispute
between:—

The Management of N.F. Railway, Maligaon,
Guwahati.

-Vrs.

Their workman Shri Dipankar Baruah, rep. by
the General Secretary, Rail Mazdoor Union,
Maligaon, Guwahati.

APPEARANCES

For the Union : Mr. A. Ahmed, Advocate
Mr. M.K. Das, General
Secretary, Rail Mazdoor Union,
Maligaon.

For the Management : Mr. A.K. Nath, Advocate
Date of Award: 16.06.2015

AWARD

1. This Reference has been initiated on an Industrial Dispute raised by the workman Shri Dipankar Baruah, Ex-Emergency Peon, represented by the General Secretary, Rail Mazdoor Union, Maligaon, Guwahati against the Management of N.F. Railway, Maligaon, Guwahati, consequent upon termination of Sh. Dipankar Baruah, Ex-Emergency Peon from service; which was referred by the Ministry of Labour for adjudication *vide* their Order No. L-41011/83/2011-IR(B-I) dated 08.02.2012. The Schedule of this reference is as under.

SCHEDULE

"Whether the action of the management of N.F. Railway, Guwahati in terminating the services of Shri Dipankar Baruah, Ex-Emergency Peon, *w.e.f.* 30/04/2008 *vide* their order dated 30/4/2008, is legal and justified? To what relief the workman is entitled?"

2. On receipt of the order from the Ministry of Labour, Government of India, New Delhi, this reference case was registered and notices were issued by Registered Post to the parties concerned directing them to appear in the Court on the date fixed and to file their written statement along with the relevant documents in support of their claim. Accordingly both the parties appeared and submitted their respective claim statement/written statement.

3. The case of the Union, representing the workman Dipankar Baruah, in nutshell, is that the workman was appointed by the Management of N.F. Railway with effect from 23.8.2007 against the clear vacancy of Substitute Emergency Peon as the regular appointee to the post in the regular scale of pay of Rs. 2550-3200/- per month (lateron

revised by 6th Central Pay Commission scale of Rs. 5200 to 20200/-), *vide* letter No. E/227/I/5-B(Q) Pt. I dated 23.8.07. The scale of pay of the workman was a regular scale of pay given to a permanent post in the then Group D service in Indian Railway. Accordingly the workman joined his duty on 23.08.07 as Substitute Emergency Peon (in short Sub/E/Peon) attached to the General Manager, N.F. Railway against regular post on the terms and conditions mentioned in the appointment letter. At the material time the post of the workman was to be maintained in the sanctioned strength of the relevant Emergency Peon Unit of the Establishment of General Manager, N.F. Railway, Maligaon against permanent incumbent's absence or otherwise as per Book of Sanction. The mode of engagement of SE Peon prevalent at the relevant time was that the appointment was made for three months only but extended for further period depending upon the satisfaction of the officer attached to whom till he attained temporary servant's status after 120 days continuous satisfactory service, and the officer to whom the SE Peon is attached, has to certify the satisfactory service of the SE Peon serving under him at the end of 90 days service by the SE Peon only whereafter his service is extended further. Accordingly the service of the workman was extended on completion of his continuous service of 120 days after the officer concerned (GM, N.F. Railway) or his authorized official attached to his office certified the service of the workman as satisfactory, otherwise his service would not have extended under the terms and conditions of his engagement. The workman rendered continuous satisfactory service as SE Peon under the General Manager, N.F. Railway and got the pay and perks from the management and he was terminated on 30.4.08. He attended the duty for 153 days up to 22.01.2008 and thereafter he undergone treatment by Railway Doctor on authorization through an official sick memo from GM's office to the Central Hospital of N.F. Railway, Maligaon. Thereafter the workman submitted a fit certificate on 21.04.08 to the office of Office Superintendent (OS) of GM's Office keeping record of his Attendance to resume his duties, but the OS refusing resumption of his duties referred him to the higher officer who in turn directed the workman to go to the Bungalow of the GM and to obtain consent of GM or PPS to GM for his resumption of duty. The workman, reported at the GM's Bungalow but he was refused admittance. The workman came back to the office of the GM but he was turned back by the Office.

Further case of the workman is that giving all due and reasonable allowance to the Management of N.F. Railway to prepare the report of the workman's unsatisfactory service and for acting thereupon, retention of the workman in his post for so long after his continuous service for 120 days even as his service was alleged to be unsatisfactory, the inaction of the management on his report is not sustainable as there is strong presumption that under the

law the workman already attained the Temporary Status when his service was not given legal standing of being unsatisfactory. As such, the workman attained temporary status on his retention of service after his continuous service for 120 days and then up to 153 days. But the management, all on a sudden discharged the workman from his service *vide* letter No. E/227/15-B(Q) Pt. I dated 30.04.08 without following due procedure as established by the law and the relevant Railway Rules framed thereunder, and the discharge of the workman is by way of termination of service of his unsatisfactory service with 14 days pay in lieu of 14 days notice. It is also mentioned that the management, along after his termination, in order to deprive the workman the protection of his posting by virtue of his having attained as per the law the status of a temporary Railway servant through his continuous service for 120 days and more, submitted a letter No. E/227/15-B(Q) Pt. I dated 17.03.2011 to the Assistant Labour Commissioner (C), Guwahati in industrial the dispute through the Principal Private Secretary to the General Manager, N.F. Railway along with 2 notes *vide* Nos. Z/Secy/12/CRB/2007 dated 03.12.2007 and Z/Secy/CPO/12/2008 dated 25.04.2008 describing the service of the workman not satisfactory in the notes and also advising the workman's termination from service was for unsatisfactory service. Thus the management through these two notes has resorted to devious means to distort the service record of the workman during his first 90 days and first 120 days just to deny him the temporary status under law and issue the notes under the dated 03.12.2007 mentioned above. But the said notes were not in existence during the mandatory period of 120 days continuous service of the workman with satisfactory performance, and these documents were produced only after about 3 years. Thus it is clear that management had applied contradictory statement just to frustrate the workman's right to temporary status. As such the action of the management is violative of the Provision of Article 14, 16 and 21 as well as the provision of Indian Railway Establishment Code 1985, and Indian Railway Establishment Manual and Master Circular issued from time to time. The Union further alleged that the workman was not allowed to resume duty after his treatment for Tuberculosis at Railway Hospital and he was declared fit to resume duty by the same Hospital and when there was no order of discharge or termination from the service.

The workman on being aggrieved and dissatisfied with the impugned order of termination, the workman represented the management by an appeal dated 2.3.09 which was followed by a reminder dated 5.10.2010 praying for reinstatement, but it was in vain. Thereafter he applied to the Director of Public Relation, Railway Board and also approached to the Railway Minister on 7.12.2009 praying for relief but to no avail. Then he take the matter with the Union, which placed this dispute before the RLC (C), Guwahati.

The Union also stated that after holding the status of temporary Railway servant being a SE Peon he became entitled to all the rights and privileges as admissible to a temporary Railway employee in terms of para-4.2 of the Master Circular No. 20 issued by the Railway Board *vide* letter No. E/205/O/RP-EMERGENCYPEON/PC/CON dated 15.2.99. Further the management by terminating him without notice pay has also violated the provision of Railway Rules as well as Industrial Dispute Act, 1947. It is also mentioned that the workman being the Temporary Railway Servant is entitled to the protection under Article 311 of the Constitution of India and the Provision of Indian Railway Establishment code 1985. Further the illegal practice of the Railway in not providing the SE Peon to sign Daily Attendance Register or not allowing any token of their attendance on duty came in handy in this willful distortion of fact and due to such an act of the management the workman suffered irreparable loss. Hence, the Union prayed for deciding the dispute granting reinstatement of the workman as Group-D or equivalent post with effect from the date of his order of termination granting the period of his absence as continuous service along with the consequential/incidental relief of normal protection if any at par with his juniors in his Emergency Peon Unit of N.F. Railway at its Headquarter.

4. The management of N.F. Railway, on the other hand, submitted their defence, placing their written statement stating, *inter-alia*, that this reference is not maintainable in present form as well as in fact and denied the contentions of the Union except what has specifically admitted in their W.S. The management stated that the workman Sri Dipankar Baruah was engaged as SE Peon attached to the then GM, N.F. Railway on pay scale of Rs. 2550/- to 3200/- with effect from 23.08.07 on certain terms and conditions and the engagement of the workman will not confer upon any right to claim for further appointment in this Railway and he is liable to be discharged without any notice when his service will not be required by the Administration or on the expiry of the currency of the post against which he was engaged or in the event of the posting of approved hand; and he may also be transferred with the officers with whom he was engaged as SE Peon or he would be discharged in the event of the said officer who expressed his willingness to take him on transfer along with him. Management submitted that the SE Peon at the first instance will be for a period of 3 months only and it may be extended further on receipt of a certificate from the controlling officer to the effect that the service of the Substitute Emergency Peon are satisfactory. The management contended that although the workman completed 120 days of service the said status has not been awarded to him due to unsatisfactory remarks received from the competent authority *vide* PPS to GM's confidential note No. Z/Secy/12/CRB/2007 dated 03.12.2007 wherein it was intimated that the service of the workman Dipankar Baruah is not satisfactory as because he is not

showing interest in his work. Subsequently PPS to GM *vide* another confidential note being No. Z/Secy/CPO/12/2008 dated 25.04.2008 intimated that the service of the workman have been found unsatisfactory in as much as he failed to maintain sincerity in his job and remained absent from his service without authority for which GM, N.F. Railsay desires that he may be terminated with immediate effect. Accordingly the workman was terminated with effect from 30.4.2008 with 14 days notice pay due to his unsatisfactory service. The Management further mentioned that the service of Sri Dipankar Baruah has not been found satisfactory before completion of period of 4 months. Sri Barua was initially sanctioned 5 days casual leave with effect from 14th January to 19th January, 2008 and thereafter he reported sick from 23.01.2008 and got extended upto 21.04.2008 by the Sr. DMO/CH/MLG, and though the workman was declared fit on 21.4.2008 he did not report for duty fill the date and as such, the services of the workman was not available since 14.1.2008 *i.e.* more than 3 months. The management also contended that the service of the workman was found unsatisfactory in as much as he failed to learn his job and remained absent without authority for which the GM desires that action may be initiated for termination of his service with immediate effect. The Management denied the claim of the workman after completion of 120 days of his service the workman was sick and ultimately he did not turn up practically from 14.01.2008 till 25.04.2008; and that the workman was terminated with 14 days notice pay due to his unsatisfactory service report. The management stated that from the record it appears that the workman has worked as SE Peon with effect from 23.08.2007 to 13.01.2008 *i.e.* 144 days and he was granted 05 days casual leave *w.e.f.* 14.01.2008 to 19.01.2008 and thereafter he reported sick from 23.01.2008.

The management denied the statements made in paragraphs-13, 14, 15, 16, 33 and 37.

Further pleading of the management is that the workman was terminated from his service after completion of continuous service beyond 120 days with effect from 30.4.2008, but entitlement for temporary status and holding of temporary status are not similar as for temporary status the service of the workman must be satisfactory to the authority concern. The management also mentioned that the Union tried to misinterpretate the judgement passed by the Hon'ble CAT, Guwahati Bench in O.A. Nos. 54/02 Sri Vinod Kumar Sarma-*vs*-Union of India and others and in O.A. No. 228/2006 Shri Ranjit Hore-*vs*-Union of India and Ors. Thus the management contended that the claim of the workman is not legal and genuine and hence the workman is not entitled to any relief as prayed for.

5. The Union in order to establish their case, examined 2 witnesses including the workman and Sri Dipankar Baruah as W.W. 1 & Sri M.K. Das, General Secretary, RMU as

W.W. 2. While the management examined their solitary witness namely Mr. Chandra Sekhar Pandit, Assistant Personnel Officer (Welfare) N.R. Railway, Maligaon, "After closing of evidence of both the sides I have heard argument from both the sides at length.

6. On perusal of the evidence on record it appears that the workman Dipankar Baruah was appointed as Substitute Emergency Peon on 23.8.07 *vide* N.F. Railway's letter No. E/227/1/5- B(Q) Pt. I dated 23.08.07 *vide* Exhibit-1. Accordingly the workman joined on the same date as SE Peon in the regular pay scale of Rs. 2550/- to 3200/- attached to G.M., N.F. Railway *vide* his joining report dated 23.8.07 *vide* Exhibit-2. As per the then mode of engagement of SE Peon, initial appointment was made for 3 months only but extended for further period depending on satisfaction of the officer for whom in his official capacity. The SE Peon attains temporary status after 120 days continuous satisfactory service, and the officer concerned under him the SE Peon is attached has to certify the satisfactory service of the SE Peon serving under whom at the end of 90 days service, and only whereafter his service is extended further. In Rule 1512 of the Indian Railway Establishment Manual, 1989 Revised Edition) and in the Master Circular on the appointment of substitutes in the Railways No. 20 issued by the Railway Board/Ministry of Railway wherein the Substitute Peon are defined and their service conditions are provided for. In terms of the Indian Railway Establishment Manual 1989 Rule 1512, Rule 1513 and Rule 1515 proved as Exhibit-4; and the Master Circular on the appointment of Substitute in Railway issued by the Railway Board/Ministry of Railway is proved as Exhibit-5 regarding appointment of Substitutes the service of the workman was extended on completion of continuous service for 120 days otherwise his service would not have been extended; but the management, suddenly by an order *vide* letter No. E/227/1/5-B(Q) Pt. I dated 30.04.2008 *vide* Exhibit-3 terminated the workman from his service with effect from 30.04.08. The W.W.1 alleged that he was terminated by the management of N.F. Railway without following the due procedure as established by the Rules and the relevant Railway Rules thereunder after 153 days of his continuous service. The workman mentioned that the long after his termination in order to deprive him of the protection of his posting by virtue his having attained under the law the status of temporary Railway Servant, and that in spite of his continuous service for 120 days and more, a letter under No. E/227/15-B(Q) PT. I dated 17.03.2011 (Exhibit-7) issued by Dy. CPO, IR, N.F. Railway to the Assistant Labour Commissioner (C) at Guwahati in course of conciliation proceeding in an Industrial Dispute enclosing 2 notes under No. Z/Secy/12/CRB/2007 dated 03.12.2007 (Exhibit-8) and No. Z/Secy/CPO/12/2008 dated 25.4.2008 (Exhibit-9) from the Principal Private Secretary to the General Manager, N.F.

Railway stating that his service was not satisfactory and also advising his termination from service for unsatisfactory service in the note dated 25.4.2008; and these 2 notes as aforesaid has resorted to devious means to distort his service during his first 90 days and first 120 days just to deny him the temporary status in the eye of law. But both the aforesaid notes as mentioned above were not in existence during the mandatory period of 120 days continuous service which was rendered by him with satisfactory performance. It is also mentioned that the prevailing set of Rules that without re-engagement in clear terms and in absence of the stipulation in the terms and conditions or the rules of probation of the SE Peon category that the period of term of 90 days or 120 days continuous service can be extended beyond 90 and 120 days even if the service is found unsatisfactory. Thus it is clear that the management have applied contradictory and self defeating standard for the same set of rules just to frustrate his right to temporary status. The workman also said that he completed 153 days of continuous service from 23.08.2007 to 22.01.2008 and as such he acquired the temporary status in the eye of law, and the termination was not in terms of the engagement but in terms of the Statutory Rule 301(I) of Indian Railway Establishment Code. He also denied the contention of the management placed during conciliation that he was terminated for his unwillingness to learn the work and his unauthorized absence from duty which is not a fact, clearly shows that the termination was not termination simpliciter. The W.W.1 added that on being aggrieved he represented to the authorities his grievances by filing appeal preferred before the GM (Exhibit-12) on 2.3.09 and on 5.10.2010 followed by reminders praying for re-instatement and offering to work as SE Peon with any other officer explaining the situation and challenging the validity of the termination order but it was without any result. He also applied to the Director, Public Relations, Railway Board and appealed to the Union Railway Minister (Exhibit-13) on 7.12.09 but to no avail.

The W.W.1 further stated that according to Railway Circular No. E/205/O/RP-Emergency Peon/PC/CON dated 15.2.1999 marked as Exhibit-10, read with the Indian Railway Establishment Code, Indian Railway Establishment Manual and the Master Circular as aforesaid it is provided that while Emergency Peon who has not attained the temporary status can be terminated, it will not be because when he attained temporary status or became regular group-D employee as it calls for disciplinary action which requires all the requisite rules and formalities as applicable to regular employees are to be followed. He also said that the management also violated the law of Notice Pay which must be paid at the time of termination of the service as he was paid the notice pay only after a considerable period. Thus the process of termination was violated and it was a colourable exercise of power by the management in

disregard to the Railway Service (Discipline and Appeal) Rules, 1968, and Article 311 of the Constitution of India. He again mentioned that he was never served with any notice expressing dissatisfaction over his service as alleged, and only during conciliation the management produced the letter dated 23.8.11 alleging that his service was unsatisfactory and he was absent unauthorisedly, but he was never given any opportunity to offer his defence against the said allegation nor he was given the 14 days notice before his termination. He pointed out that the Railway Board's No. E(NG) 11/77/SB 37 dated 24.10.1976 and N.F. Railway letter No. 83-E/i/pt WE iv dated 31.12.1997 provides that the Peons are engaged as substitutes and as such they are entitled to temporary status on completion of 120 days of continuous service and with the temporary status they are to be provided with all the facilities as are applicable to other temporary status holders. The workman also pleaded that the temporary Govt. servants are also entitled to protection of Articles 311(2) in the same manner as permanent Govt. Servant if the Government takes action against them by meeting out one of the three punishments *i.e.* dismissal, removal or reduction in rank. The workman mentioned that he was under treatment of Railway Doctor for a period on authorization through an official sick memo from GM's Office to the Central Hospital of N.F. Railway, Maligaon and later on on 21.4.08 he submitted his fit certificate and met the Office Superintendent of the GM's Office keeping record of his attendance to resume duty but the Office Superintendent refusing his to resume duty referred him to higher officer who in turn directed him to GM's Bungalow and asked him to resume duty obtaining consent of GM or PPS to GM. Thereafter he reported to the GM's bungalow but he was refused admittance while he came back to GM's office. In support of this contention the W.W.2 has proved a letter No. H/SF/08/01 dated 28.02.2008 issued by Dr. T.K. Das, Medical Director/CH/MLG and the Medical Advice/Prescription Memo dated 28.02.08 issued by the medical Officer in favour of the workman *vide* Exhibit-17 & Exhibit-18 respectively.

In his cross-examination the W.W.1 stated that now he is an unemployed staying at Maligaon on Railway land; that he has been dealing with vegetable etc. He also mentioned that from 19.1.2008 he had been suffering from Tuberculosis and treated under Railway Hospital, Maligaon, while the Doctor Advised him for treatment for three months and thereafter advised for periodical check up and he was under regular treatment upto 21.4.2008. He categorically denied the suggestion tendered by the learned Advocate for the management that the statement made by him regarding his illness and treatment in the Railway Medical Hospital for which he could not submit any document; and that he was on casual leave for 5 days with effect from 13.1.08 to 18.1.08 and thereafter he was absent without any intimation to the authority. He again denied the suggestion that he could not render satisfactory service during the period of

his working and he remained absent without any authority for which he was discharged with 14 days pay which was received by him at his residence. The W.W. 2 Mr. M.K. Das, in his evidence on Affidavit, supporting the entire statement of W.W. 1 stated that the workman joined as Substituted Emergency Peon in the establishment of General Manager, N.F. Railway in regular pay scale of Rs. 2550/- to 3200/- on some terms and conditions issued *vide* Exhibit-1; and that as per the provision the engagement of SE Peons are engaged for 3 months initially and extended for further period depending on the personal satisfaction of the officer with whom the services of the SE Peon is engaged till he attained a temporary service status after 120 days continuous satisfactory service, and the officer concerned has to certify the satisfactory service of the SE Peon serving under him at the end of 90 days. He also referred the definition and service condition of the SE Peon as provided in Rule 1512 to 1516 of Indian Railway Establishment Manual, and the Master Circular on the appointment of SE Peon in Article No. 20 by Railway Ministry/Railway Board (Exhibit-4, Exhibit-5 and Exhibit-10). The W.W. 2 also mentioned that the workman rendered his service for a period of 120 days continuously with effect from 23.8.07 to 18.12.07 without getting any information about his any dissatisfactory service or any fault in his service or show cause from the management. Thereafter the workman was under treatment of Railway Doctor on authorization through an official sick memo from GM's office to the Central Hospital. N.F. Railway, Maligaon and subsequently fit certificate was issued by the Doctor that the workman was under treatment from 23.1.08 to 21.4.08 and he was fit to join duty with continued treatment *vide* Exhibit-16, Exhibit-17 and Exhibit-18. The W.W. 2 also mentioned that the workman was allowed to remain in service beyond the terms and conditions of his engagement for a period of 153 days upto 22.1.2008 and hence, there is strong presumption of law that the workman has already attained the status of temporary status that the workman was not capable of alleged satisfactory service, and as such the management has applied a contradictory and self defendant standard just to frustrate the workman's right to temporary status. He also mentioned the as per the Railway Circular dated 15.2.99 marked as Exhibit-10 (para-E) which provides that while Emergency Peon does not attain the temporary status can be terminated, it will not be the case when he attains temporary status or becomes a regular Group-D employee as it calls for disciplinary action which requires all the requisite rules and formalities as applicable to regular employees are to be followed. As such, the termination of the workman is not in terms of the engagement but in terms of the Statutory Rules 301(I) of the Indian Railway Establishment Code, since the workman was intentionally deprived from the temporary status and yet continued in service for some more days, and that the reason adduced by the management during the conciliation that he was

terminated for his unwillingness to learn his work etc. and that he was unauthorized absent from duty, which are not a true and it clearly shows that the termination was a termination simpliciter. The workman witness No. 2 also submitted that the workman represented his grievance by an appeal preferred before the Government Manager on 2.3.09 and subsequently reminder dated 5.10.2010, and before the Minister of Railways on 7.12.2009, but that was without any result. He further referred the para-7 note (ii) of the Book named Digest of Discipline, Appeal and Conduct Rules", Eighth Editions, 2004 of B.S. Mainee extract of which has been proved *vide* Exhibit-14, wherein it has been stated that in terms of Railway Board Circular No. E(NG) 60 CL-13 of 13.5.63 Casual Labours and Substitutes on completion of four month's service, when paid regular scales of pay, attain temporary status and are governed by these rules. Mr. M.K. Das again stated that the service of the workman is governed by the various provision of Industrial Dispute Act, 1947 overriding the Railway Rules. While the management did not pay the retrenchment compensation to the workman, and in this connection the copy of the instrument of payment after termination to the workman as B.R. No. AGB/22/08 dt. 30.4.2008 prepared in two sheets marked as Exhibit-15. Thereby the management failed to pay the workman notice pay within 48 hours of retrenchment/termination and thus violated their own rules. The W.W. 2 added that the management violated the provision of Articles 311 and the principle of natural justice as well and their own Circular dated 15.2.99 (Exhibit-10) wherein at part (B) with the Heading "Choice in regard to Engagement of fresh face" by which the terminated SE Peon has a locus to seek his fresh appointment and the same seniority unit, the workman applied for reengagement/reinstatement but he was not considered for fresh appointment whereas numerous fresh SE Peon have been engaged in the mean time.

The W.W. 2 again stated that the notice produced before the ALC (C), Guwahati during conciliation *vide* Exhibit-8 & Exhibit-9 shows that it was alleged that the working report of the workman attached to the General Manager is not satisfactory as he is not showing any interest of his work and that the service of the workman has not been found satisfactory and that the workman was found absent unauthorisedly. But the said report was submitted by the PPS to General Manager without mentioning that the workman has not done to the satisfaction of the employer but which of the works the workman had done not showing interest to learn. He also mentioned that in levelling the charge of unauthorized absent of the workman since 21.1.08 the date on which the workman reported at GM's Office to PPS to GM, Sri R.R. Rajak while the workman was not permitted to resume his duties on his sick and fit certificate marked as Exhibit-16, Exhibit-17 & Exhibit-18. It is stated by Mr. M.K. Das that the workman was on CL for 5 days from 14.01.2008 to 19.01.2008 and he was to report for duty on

20.1.08, but due to continued sickness and treatment on 20.01.2008 which is evident from the prescription memo No. 13703 dated 20.1.2008 (Exhibit-16) with observation of the Doctor regarding his treatment for his illness as an outdoor patient of the N.F. Railway, Central Hospital, Maligaon. The workman also produced the medical prescription and fit certificate dated 28.2.08 *vide* Exhibit-17 & Exhibit-18 wherein it is mentioned that the workman was admitted into the hospital as indoor patient on 23.01.2008 and was discharged from Hospital on 31.01.2008 and initial sick certificate was issued for 15 days treatment because of his suffering from pulmonary Tuberculosis and Pleural Effusion which was not an open infectious disease. He also added that the workman got extension of his treatment from 07.02.08 to 22.3.08 and then 23.03.08 to 06.04.08 as per prescription memo dated 28.02.08 as mentioned in the marginal notes thereupon. Hence, the W.W. 2 stated that the workman already attained temporary status as per provision of law before the date of his termination from service but the workman was terminated under Rule 301(1) of Indian Railway Establishment Code which is not applicable as the said Rule is not relevant in the instant case. As such it is a fit case of decision in favour of the workman.

In his cross-examination, the W.W. 2 categorically denied the suggestion tendered that the workman did not attend his duty from 21.4.08 to 25.4.08. rather he confirmed that the workman attended his duty on 21.4.08 but he has not produced any document in support of the fact that the workman attended his duty on 21.4.08 and that on that date (21.4.08) and the workman was not allowed to put his signature on the Attendance Register. He further denied the suggestion raised by the learned Advocate for the management with the observation made by Railway in Exhibit-8 against the workman is not true. The W.W. 2 also stated that the Exhibit-10 relates to the Construction Organisation. He also denied the suggestion that after dismissal of the workman with effect from 30.4.08 he has not submitted any representation before the management. On the other hand, he confirmed that the workman submitted representation before the management on 7.12.09 and 5.10.09 but he has not submitted the copy of his representation dated 2.3.09 as mentioned in his representation dated 5.10.2010 (Exhibit-12).

6. According to Mr. Chandra Sekhar Pandit, the Assistant Personnel Officer (Welfare), N.F. Railway, Maligaon, (the MW.1) the workman Dipankar Baruah was engaged as SE Peon attached to the General Manager, N.F. Railway (Mr. Ashotush Swami) on 23.8.07 *vide* Exhibit-1 and the workman remained absent without any authority since 21.4.08 to 25.04.08. The workman was granted CL for 5 days with effect from 14.1.08 to 19.1.08 and thereafter he reported sick from 23.1.08 to 21.4.2008 and he was declared fit on 21.4.08 but he did not report duty till 25.4.08. Thereafter the service of the workman was terminated on 30.4.08 in terms

of Rule 301(I) of Indian Railway Establishment Code, Volume-I (Exhibit-3) due to violation of his condition of service as provided in the Master Circular of revised policy for engagement/retenchment etc. issued *vide* No. E/205/O/RP-Emergency Peon/PC/CON. Dated 15/18.2.1999 (Exhibit-10). The MW. 1 further mentioned before termination of the workman a report was obtained from the General Manager *vide* Exhibit-8 and also from PPS to General Manager on 25.4.08 *vide* Exhibit-9, and after due consideration of the said reports marked as Exhibit-8 & Exhibit-9 the workman was terminated from service. He added that the workman did neither submit any representation nor appeal before the management after his termination, however, the management paid the notice pay amounting to Rs. 2624/- *vide* Exhibit-15 & Exhibit-16 as such, the workman is not entitled to any relief.

During his cross-examination the MW. 1 mentioned that he could not say whether the terms "Emergency Peon" has been defined in any Railway Circular/Railway Manual, nor did he know what was the duty of Emergency Peon. He said that the Office Note dated 3.12.07 (Exhibit-8) given by the PPS to the General Manager addressed to the CPO but the same note has not been endorsed by the CPO or any other officer authorizing in that behalf. However the said note was issued by the PPS to General Manager as per advice of the General Manager. He said that the officer concerned to whom the Emergency Peon is attached is to submit the report as to his dissatisfaction on the service of the SE Peon and the duties of the SE Peon are not specifically mentioned in the Railway Circular/Manual, his function are to be determined and allotted by the officer concerned with whom he is attached. Mr. Pandit denied the suggestion tendered by the Union that there is no description in details as to the duty to be discharged by the SE Peon, that the Officer concern's assessment as to the satisfaction or dissatisfaction on the service of the Emergency Peon is arbitrary and is not legal; and that since there is no report as to the dissatisfaction of the service of the workman given by the Officer concerned to whom the workman was attached; and that the dissatisfaction report submitted *vide* Exhibit-8 by the PPS to the General Manager is not legal and proper. He again mentioned that the workman discharged his duty for 103 days during the period with effect from 23.8.07 to 30.4.08 and at the time the service of the workman was found dissatisfactory. He also admitted that after 90 days of service of the workman his further engagement depends upon satisfactory report of the officer concern to whom the Substitute Emergency Peon is attached. But he could not say under what circumstances the workman was allowed to continue of 103 days of service after completion of service of 3 months. He also admitted that no action was taken on the letter marked as Exhibit-8. The MW. 1 further sated that whether ther is any document to show that the General Manager himself expressed his dissatiffaction in writing, ther is nothing in details as to the

comments in the concluding para of Exhibit-9, on the basis of which the PPS to General Manager mentioned that the service of the workman was found unsatisfactory in as much as he failed to learn his job. He also admitted that as per the medical report the workman was sick till 21.4.08 but he was found absent without authority from 22.4.08; and that Exhibit-16 shows that the workman was discharged from hospital on 31.1.08 while in the report of the Medical Officer (Exhibit-18) the workman's sick leave extended for 45 days with effect from 7.2.08 to 22.3.08 and also in the fit certificate issued by the Medical Officer on 21.4.08 (Exhibit-6) shows that the workman was discharged on 21.4.08 with observation that the workman requires long time treatment (six months), however he was fit to join due to his continuous treatment with full course. He said that the Emergency Peon's attendance is looked after by the Officer concern with whom he is attached, and the present workman is supposed to report to the PPS for submission of his sick/fitness certificate. He further stated that without consulting the attendance register he could not say exactly the total working days beyond 103 days in respect of the workman, but after treatment of the workman the General Manager engaged another SE Peon.

7. On perusal of the document marked as Exhibit-1 i.e. the letter of engagement of the workman Sri Dipankar Baruah as SE Peon, it appears from the terms and conditions No. 3 of the said engagement letter the engagement of SE Peon at the first instance will be for a period of 3 months only and it will be extended further on receipt of a receipt of a certificate from the Controlling Officer to the effect that the service of the SE Peon are satisfactory and that he can be continued. As per Rule 1515 of the Indian Railway Establishment Manual 1989 (proved as Exhibit-4) the SE Peon are entitled to all rights and privileges as admissible to the temporary Railway Servant after acquiring the temporary status. The said rule is as under:

"1515. Rights and Privileges admissible to the Substitutes.-Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection."

Para-4.2 and Para-7 of the Master Circular of appointment of Substitutes on the Railways vide No. E(NG) 11/90/68 (Exhibit-5) runs as under:

"4.2:- They should be allowed all the rights and privileges as are admissible to temporary Railway employees on completion of four months continuous service."

"7. Break in Service.

The following cases of absence will not be considered as "break in services" for determining the our months continuous service for the purpose of absorption in regular employment:—

- (a) the periods of absence of a substitute who is under medical treatment with injury sustained on duty covered by the provisions of workman's Compensation Act;
- (b) authorized absence not exceeding 20 days during the preceding six months.

NOTE

- (i) The term "authorized absence" for this purpose covers permission granted by the Supervisory Official in-charge to be away from the work for the period specified.
- (ii) Unauthorised absence or stoppage of work will be treated as a break in continuity of employment."

In the revised policy for engagement/retraining of Emergency Peon issued vide letter No. E/205/O/RP-EMERGENCY PEON/PC/CON dated 15.2.1999 (Exhibit-10) by the N.F. Railway, Maligaon in para-5A in which it has been clearly mentioned that the appointment of Emergency Peon at the first instance will be for a period of 3 months only and will be extended further on receipt of a certificate from Controlling Officer that the service of Emergency Peons are satisfactory and that he can continue further. In Para-E of the said Circular (Exhibit-10) specifically mentioned the matter regarding discharge/termination of service of Peons which runs as:

"E. DISCHARGE/TERMINATION OF SERVICE OF E/PEONS.

1. Termination of the services of E/Peons is a sensitive aspect and this is required to be dealt with utmost caution so that relevant provisions of the Establishment Code as well as that of Industrial Disputes Act are not infringed. In view of this, it is felt necessary that the existing procedures for termination of services of E/Peon are reiterated for information and guidance of all concerned. It is clarified that all termination letters have to be issued from Personnel Branch and not directly by the Executive Branch. Necessary guidelines for termination of E/Peon are detailed below:—

2. Rule 301(1) of Indian Railway Establishment Code, Volume-I, is the relevant rule under which termination of service of Emergency Peon is to be resorted to.

3. NOTICE FOR TERMINATION OR PAYMENT IN LIEU OF NOTICE

While resorting to termination, due notice or pay in lieu of notice must be given, otherwise it will not be able to stand judicial proceeding, if any.

- (a) For Emergency Peon who has 14 days notice is to be given for

Completed for 120 days service termination of service or 14 days

- | | |
|---|--|
| | Wage in lieu is to be given. |
| (b) For Emergency Peon who has Completed 240 days service. | One month's notice is to be given or one month's pay in lieu of notice is to be given. |
| (c) For those who have not Completed even 120 days service. | No notice or notice Pay in lieu is Required to be given. |

4. PROCEDURE FOR PAYING NOTICE IN LIEU OF NOTICE

Payment of Notice Pay is a very important aspect and the proper course of action is to be ensured to prepare the bill beforehand and get it passed from the Accounts. When the bill reaches Cash Office, then only the termination order is to be handed over to the concerned E/Peon., whose services are sought to be terminated. In the termination order, it should be indicated that the E/Peon concerned should take his Notice Pay from the concerned Cash Office. It is very important because unless Notice Pay is given in lieu of Notice within 48 hours of termination of service and the person concerned goes to the CAT or Regional Labour Commissioner, the entire process of termination of service may be declared null and void. This is very vital issue. It may be mentioned that court cases in regard to termination of services of E/Peons largely originate from this aspect."

Rule 311(1) of the Indian Railway Establishment Code marked as Exhibit-11 (proved in original) which provides that

"When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Articles 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice; and to a notice of 14 days if he was not engaged on contract."

According to the Digest of Discipline Appeal and Conduct Rules by B.S. Mainee, Rules 1-3: APPLICATION & DEFINITIONS

(7) X X X X X X
X X X X

Notes(i) X X X X X

- (ii) Casual labours and substitutes on completion of four month service, when paid regular scales of

pay, attain temporary status and are, as such, governed by these rules.

Thus it clear that the engagement of Substitute Emergency Peon is made initially for a period of 90 days and it can be extended subject to the certificate of satisfactory service of the said Emergency Peon by the Officer concerned with whom he was attached to, and that on completion of 120 days of satisfactory service the said Substitute Emergency Peon acquires the rights and privileges similar to those of temporary railway servant. It is also found that after attaining temporary status the service of substitute Emergency Peon can not be terminated/ retrenched without following the due process of law and the provision of Article 311 of the Constitution of India.

8. The management both in their W.S. as well as in their evidence (evidence of management witness No.1) admitted the fact that the workman was engaged as SE Peon with effect from 23.8.07 and he discharged his duty upto 22.01.08 and thereafter he reported sick from 23.01.08 and got extended up to 21.04.08 and he was sick leave with effect 23.01.08. In their letter marked as Exhibit-7 *vide* No.E/227/15-B(Q) pt.I dated 17.03.2011 addressed to the Assistant Labour Commissioner (C), Guwahati issued by Dy. C.P.O (IR) the Management admitted that the workmen has completed the period of 120 days of service and the temporary status has not been awarded to him due to unsatisfactory remarks received from the competent authority; and that the workman worked as SE Peon with effect from 23.8.07 to 13.1.08 *i.e.* 144 day; and he was granted 5 days casual leave with effect from 14.1.08 to 19.1.08 and thereafter he reported sick on 23.1.08 which was extended upto 21.4.08. As such it is found well established that the workman on completion of his 90 days initial period of engagement, was allowed to work upto 144 days (as admitted by the management. It is the mandatory duty on the part of the management to extend the service of SE Peon on completion of 90 days of his service subject to the satisfaction certificate issued by the officer concerned to whom the said SE Peon was attached. In the instant reference the workman was allowed to work 144 days (according to the management) *i.e.* he was allowed to work 54 days although the Union has categorically mentioned that the workman worked for 153 days continuously, in spite of having unsatisfactory certificate issued by the appropriate authority as contended by the management both in their W.S., in the evidence of MW.1 as well as in their letter marked as Exhibit-7. But there is nothing on record to show that the dissatisfaction certificate was issued by the officer concerned under whom the workman worked has been communicated to the workman either within 90 days of his continuous service or before completion of this 120 days of continuous service which entitled him to acquire temporary status. It is only on the occasion of the

conciliation proceeding the management submitted a letter marked as Exhibit-7 along with 2 notes *vide* Exhibit-8 & Exhibit-9 and the said notes were written by the PPS to the General Manager on 3.12.07 and 25.4.08 respectively. For argument sake if the note regarding the dissatisfaction certificate dated 3.12.07 is accepted it should have been the duty of the management not to allow the workman to continue of work even the notice (Exhibit-9) appears to have been issued on 25.4.08 after completion of more than 120 days of the service of the workman.

The workman, on the other hand, categorically stated that he worked as SE Peon with effect from 23.8.07 to 22.1.08 and thereafter he was on sick leave and thereby he discharged his duty for 153 days which is supported by the testimony of W.W.2. The sick report issued by the Medical Officer *vide* Exhibit-16 & Exhibit-17 shows that the workman had been suffering from Pulmonary Tuberculosis with Pleural Effusion, not an poen infectious case he was likely to be fit on 23.3.08. The prescription memo issued by ADMO/CH/MLG shows that the medical leave of the workman was extended upto 6.4.08. It may not be out of context to mention here that the management in their letter marked as Exhibit-7 as well as in para-8 of their W.S. admitted that the workman worked continuously for a period of 144 days. In terms of Rule 1515 of Indian Railway Establishment Manual, 1989 (Exhibit-4) and the Master Circular on the appointment of substitutes on the Railways (Exhibit-5), Para-4.2 and Para-7 and Para(A) 5 of Railway Circular letter No.E/205/O/RP-EMERGENCY PEON/PC/CON dated 15.2.99 (Exhibit-10) it can safely be held that without obtaining satisfaction certificate on the services discharged by the workman from the Officer concerned to whom he was attached the services of the said workman beyond 90 days could not be extended and as such, it can safely be presumed that the workman completed 90 days of service with satisfaction of the Officer concerned to whom he was attached and further extension of his service upto the further period of 54 days as stated above was made on the basis of the satisfaction certificate issued by the Officer concerned. As such it is clear that as per the Provision of the Rules/Manual and the Railway Circulars as discussed above the workman has attained temporary status before his termination.

9. During argument Mr. A.K. Nath learned Advocate for the Management submitted that the workman was terminated from his service with effect from 30.4.08 under Rule 301 (1) of Indian Railway Establishment Code, Volume-I on the basis of the dissatisfaction certificate issued by the Officer concerned with whom he was attached to on the ground that the workman was not showing interest in his work and he remained absent from service without authority and as such, the termination of the workman is legal and justified and hence, the workman is not entitled to any relief as prayed for in this reference.

Mr. M.K. Das, the learned counsel for the union submitted that the workman after attaining temporary status

is entitled to all the rights and privileges and admissible to the temporary Railway servant on completion of 4 months continuous service. The workman is also entitled to protection under Rule 14 and 311 of the Constitution of India. In support of his contention Mr. Das relied upon the case of V.P. Ahuja — *vrs*— State of Punjab and Ors. reported in (2000) 3 SCC 239 wherein it was held that a probationer like a temporary servant is also entitled for certain protection, his service can not be terminated arbitrarily or punitively without complying with the principle of natural justice; and that the termination order could not be passed without following the regular enquiry. In the said judgement the Hon'ble Supreme Court also observed that the Appellant can not claim any right on the post on which he was appointed and being on probation and his service could be terminated since his work was not satisfactory without any notice as set out in the appointment letter but this plea can not be accepted.

Mr. Das, the learned counsel for the Union also pointed out that the termination of the workman by the management is arbitrary as the workman was not given reasonable opportunity of showing cause against the action taken by them. In support of his contention Mr. Das referred Purshotam Lal Dhingra — *vrs* — Union of India, Respondent AIR 1958 SC 36(1) wherein it was observed that just as Art. 310, in terms, makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor, so does Art. 311 make no distinction between the two classes, both of which are, therefor, within its protection. To limit the protection of Article 311 only two persons who are permanent members of the service or who hold permanent civil post will be to do equal works to the Railway which would be contrary to its principle of introduction of Constitution or a Statute. In that case the Hon'ble Supreme Court further observed "In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service".

10. Mr. Das, learned counsel for the Union referring the Provision of Railway Establishment (Discipline Appeal and Conduct) Rule, further submitted that for some period the employee's work was unsatisfactory is not enough as it

does not give him sufficient idea as to what he is to meet; and that the reasonable opportunity as envisaged under Article 311(2) includes (a) an opportunity to deny his guilt by the government servant and establish his innocence which he could only do if he is told what the charges levelled against him are and the allegations on which such charges are based, (b) as opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself for any other witnesses in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict the punishment and communicated the same to the Government servant. Mr. M.K. Das also pointed out that the dissatisfaction report against the workman prepared after termination of the workman, with a view to fill up their lapse & lacuna to evade the law, and as such, there notes *vide* Exhibit-8 & Exhibit-9 are manufactured in order to deprive the workman from his legal rights.

11. The Management in their letter marked as Exhibit-7 produced before the conciliation proceeding in presence of R.L.C (C), Guwahati, alongwith the notes as to the dissatisfaction of the officer concerned to whom the workman was attached to *vide* Exhibit-8 & Exhibit-9, admitted the fact that though the workman completed the period of 120 days of service his temporary status has not been awarded due to unsatisfactory remarks from the competent authority. It is also admitted that the workman worked continuously for a period of 144 days. The notes marked as Exhibit-8 & Exhibit-9 shows that the Exhibit-8 was issued by the P.P.S. to G.M. addressed to the C.P.O. but there is no endorsement of the C.P.O on this report nor any action taken thereon, while the note *vide* Exhibit-9 was prepared on 25.4.08 mentioning the service of the workman unsatisfactory in as much as the workman failed to learn his job & remained absent without authority. The MW.1 categorically mentioned that after 90 days his further engagement depends upon satisfactory report of the officer concerned to whom the workman was attached to, but he could not say under what circumstances the workman was allowed to continue to work beyond the period of 103 days, although they admitted in their letter marked as Exhibit-7 that the workman discharged the services continuously for 144 days. Thus the silence of the Management in taking appropriate step against the workman as well as the contradictory statements made by the Management in their evidence of MW. 1, the W.S & their letter marked as Exhibit-7 give rise to sufficient doubts as to the trustworthiness of the pleading & the evidence of the Management as a whole. On the other hand, evidence of the Union is found not shaken, rather trustworthy & as well as supported by the

relevant documents & the Railway Establishment Code, Railway Manual & Discipline Appeal Conduct Rule. and Master Circulars issued by the Railways from time to time. As such I can not reject the argument raised by the Union.

The record shows that it is an admitted fact that due to his illness the workman was on C.L from 14.01.08 to 19.01.08 & thereafter reported sick from 23.01.08 to 21.04.08. The workman categorically stated that after discharge from Hospital he reported to the P.P.S to G.M. for duty but he was not allowed to join even he was not attended to enter into the Bunglow of the G.M. This testimony of the workman remain un rebutted. Thus the allegation of unauthorized absence of the workman raised by the management is also found not maintainable. The evidence also shown that the workman submitted appeal before the appropriate authority but of no avail.

12. From the above discussion it is found well established that the service of the workman was terminated, after discharging his duty for a period of 153 days *i.e.* after acquiring the status of temporary government servant, without holding any enquiry nor any prior notice to the workman. Further it is also found that the workman after his dismissal represented before the Appellate Authority for his reinstatement but there is nothing on record to show that his appeal was entertained. In this connection I am inclined to rely upon the decision of Hon'ble Supreme Court in Ram Chander — *vrs* — Union of India and Ors. reported in AIR 1986 SC 1173 wherein it was held that "it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize the reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

The Hon'ble Supreme Court in a catena of cases held that reasonable opportunity as envisaged by Articles 311(2) should be afforded to the workman before his dismissal/removal/termination, and that the authority concerned empowered with the task of entertaining appeal who applied their mind on the representation of the delinquent. In the instant case the workman in spite of acquiring the status of temporary Railway servant was deprived of availing the protection as envisaged under Rule 301 in the Railway Establishment Code, the Master Circular No. E(NG)/11/90/GS/Master Circular marked as Exhibit-5, the letter NO. E/2005/O/RP-EMERGENCY PEON/PC/CON dated 15.2.9

(Exhibit-10) issued by the Railway regarding the service condition etc. as well as the terms and conditions of the SE Peon, and the Discipline Appeal and Conduct Rules (Exhibit-14). It is also found well established that the workman was denied the protection as envisaged in Article 14, 16 and 311 of the Constitution of India as well as the principle of natural justice. In view of my above discussion and having regard to the decision of the Hon'ble Supreme Court as discussed above I find no reason to reject the contention of the Union that the workman Sri Dipankar Baruah was terminated from his service as Emergency Peon with effect from 30.4.2008 after attaining temporary status, is illegal and not justified, and such action of the Management is against the principle of natural justice. Accordingly it is opined that the action of the management of N.F. Railway, Guwahati in terminating the service of the workman Sri Dipankar Baruah, Ex/Emergency Peon with effect from 30.4.08 *vide* their order dated 30.4.08 is illegal and not justified.

13. In view of the findings arrived at as above, it is held that the workman is entitled to be reinstated as Substitute Emergency Peon or in Group-D or now equivalent post in Railway with his inter-se seniority as on the date of his engagement. As regards backwage as claimed by the workman it is mentioned that the workman in his evidence stated that since after his termination he has been residing on Railway land and dealing in vegetable etc. and in my humble opinion I find it wise to award 50% of his back wage with effect from the date of his termination adjusting the notice pay, if received, by the workman. Accordingly this reference is disposed of deciding the issue in favour of the workman.

14. However, I award no cost. Let this Award be forwarded to the Ministry for needful as per procedure.

Given under my hand and seal of this Court on this 16th day of June, 2015 at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1327.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विशाखापटनम पतन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 16/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं. एल-34011/5/2009 - आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2015

S.O. 1327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Visakhapatnam Port Trust. and their workmen, received by the Central Government on 30.06.2015.

[No. L-34011/5/2009 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 9th day of October, 2014

INDUSTRIAL DISPUTE No. 16/2010

Between:

The General Secretary,
Visakhapatnam Port Employees Union,
D.No. 26-15-204, Dharmasakthi Bhawan,
Visakhapatnam-530 001.Petitioner
AND

The Chairman,
Visakhapatnam Port Trust,
Port Area, Visakhapatnam - 530 005. ...Respondent

Appearances:

For the Petitioner : Sri K. Balakrishna (Expired)
For the Respondent : None

AWARD

The Government of India, Ministry of Labour by its order No. L-34011/5/2009-IR (B-II) dated 28.1.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Visakhapatnam Port Trust and their workman. The reference is,

SCHEDULE

"Whether the action of the Management of Visakhapatnam Port Trust in not promoting Sri P. Prasada Rao, Electronic Technician (Sr.) to the post of J.E. (Electronics) is justified or not? What relief the concerned workman/visakhapatnam Port Employees Union is entitled?"

The reference is numbered in this Tribunal as I.D. No. 16/2010 and notices were issued to the parties concerned.

2. Petitioner filed claim statement. In spite of fair opportunity management did not file counter statement as such, case stands posted for Petitioner's evidence.

3. At this stage, it is reported that counsel for Petitioner expired and time is sought for. There is no representation for Petitioner till date. Inspite of giving fair opportunity petitioner is not taking interest in the Proceedings. In the circumstances, taking that no claim to be made for the Petitioner, 'Nil Award' is passed.

Award is passed accordingly. Transmit.

M. VIJAYALAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner
NIL

Documents marked for the Respondent
NIL

नई दिल्ली, 30 जून, 2015

का.आ. 1328.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जवाहरलाल नेहरू पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुंबई के पंचाट (संदर्भ संख्या 67/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.6.2015 को प्राप्त हुआ था।

[सं. एल-31025/5/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2015

S.O. 1328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, Mumbai as shown in the Annexure in the industrial dispute between the management of Jawaharlal Nehru Port Trust and their workmen, received by the Central Government on 30/06/2015.

[No. L-31025/5/2004-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present :

JUSTICE S.P. MEHROTRA,

Presiding Officer

REFERENCE No. CGIT-1/67 OF 2004

Parties: Employers in relation to the management of Jawaharlal Nehru Port Trust

And

Their workmen

Appearances:

For the first party/Management : Mr. Lancy D' Souza, Adv.

For the second party/Union : Mr. Jaiprakash Sawant, Adv.

State : Maharashtra

Mumbai, dated the 7th day of May, 2015

AWARD

1. The present Reference has been made by the Central Government by its order dated 27.7.2004 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial disputes Act, 1947. The terms of Reference as per the Schedule to the said order are as under:

"Whether the demand of Nhava Sheva Bandar Kamgar Sangatana (Antargat), 64 Shopping Centre, JNPT, Township, JNPT, Raigad Distt. for absorption of workers (as per annexure 'A' and 'B') engaged by the management of Jawaharlal Nehru Port Trust, Sheva through contractors in the Tugs, Pilot Launches, Survey Launches, Mooring Launches and VIP Launches etc. from date of their initial engagement is legal and justified? If not, what relief are the workmen concerned entitled to?"

2. As is evident from the abovequoted Reference, the names of workmen concerned are given in Annexure - A (wherein 124 workmen are mentioned) and Annexure - B (wherein 26 workmen are mentioned) to the reference. Thus, the total number of workmen in regard to whom the Reference was made was 124+26=150.

3. By the Order dated 12.8.2004, notices were directed to be issued to the parties in the present Reference. The parties put in appearance.

4. Pleadings were exchanged between the parties. The case, at present, is at the stage of evidence. The case was lastly fixed on 6.5.2015.

5. By the Order dated 6.5.2015, the case was fixed for 7.5.2015. i.e. today.

The case is accordingly put up today.

Shri Jaiprakash Sawant, learned counsel for the second party/Union is present.

Shri Bhushan Patil, General Secretary of the second party/Union is also present.

Mr. Lancy D' Souza, learned counsel for the first party/Management is present. Shri A. Ramaswami, Deputy Manager in Jawaharlal Nehru Port Trust and Shri Sanjay Sawant, Assistant Manager (Marine) in Jawaharlal Nehru Port Trust, are also present on behalf of the first party/Management.

6. An Application has been filed today on behalf of the second party/Union, *inter-alia*, praying that in view of the averments made in the Application, the second party/Union is now not pressing for adjudication of the present Reference. The Application is signed by Mr. Jaiprakash Sawant, learned counsel for the second party/Union as well as by Mr. Bhushan Patil, General Secretary of the second party/Union.

7. Mr. Lancy D'Souza, learned counsel for the first party/Management has made the following endorsement on the aforesaid application;

"Say of the first Party

The Management of J.N.P.T., the First Party above named has no objection for allowing the above Application made by the Union."

8. It is *inter-alia*, stated in aforesaid Application that the second party/Union representing the workmen has arrived at the settlements on 25.11.2014 with the Management of M/s. Blue Star Security and Facility Services and M/s. Pragati Marine Services, the Contractors of the Management of Jawaharlal Nehru Port Trust (first party/Management) under Section 12(3) of the Industrial Disputes Act, 1947 before the Assistant Labour Commissioner (Central) II, Mumbai in the matter of improvement in service conditions of the second party/workmen.

9. Copy of the Settlement dated 25.11.2014 arrived at by the second party/Union with the aforesaid M/s. Blue Star Security and Facility Services is annexed as Exhibit - A to the aforesaid Application. The Settlement is signed by Shri Vikas Rajaram Bhoir, Representative/Proprietor of M/s. Blue Star Security and Facility Services as well as by the aforesaid Shri Bhushan Patil, General Secretary of the second party/Union. The Representatives of the first party/Management namely, Shri A. Ramaswami and Shri S.B. Pagare have signed the Settlement as witnesses. A list of 66 workmen is annexed as Annexure-1 to the said Settlement.

10. Copy of the Settlement dated 25.11.2014 arrived at by the second party/Union with the aforesaid M/s. Pragati Marine Services Pvt. Ltd is annexed as Exhibit-B to the aforesaid Application. The said Settlement is signed by Mr. M.V.S. Choudhary, Representative of M/s. Pragati Marine Services Pvt. Ltd as well as by Shri Bhushan Patil,

General Secretary of the second party/Union. The Representatives of the first party/Management, namely, Shri Pranesh Chandra Roy and Shri S.B. Pagare have also signed the settlement as witnesses. A list of 35 workmen is annexed as annexure-1 to the said Settlement.

11. As noted earlier, the Reference was in regard to total number of 150 workmen whose names were contained in Annexures- A and B to the Reference order. It is, *inter-alia*, stated in the aforesaid Application that out of the workmen whose names are mentioned in Annexures A and B to the Reference order, nearly 65 workmen named therein have either retired from their services, expired or left the services in the course of time. It is, *inter-alia*, further stated in the aforesaid Application that the status of all the 150 workmen covered in Annexures A and B to the Reference order is given in the statement as contained in Exhibit - C to the aforesaid Application.

12. Mr. J. Sawant, learned counsel for the second party/Union states that besides the 150 workmen covered in the Reference Order, certain workmen also came on the scene subsequently, and the aforementioned settlements mention the names of such Workmen also.

13. As noted earlier, it is, *inter-alia* prayed in the Application that in view of the averments made in the aforesaid Application, the second party / Union is now not pressing for adjudication of the Industrial Dispute forming the subject- matter of the Reference.

14. Mr. J. Sawant, learned counsel for the second party/Union states that in view of the averments made in the aforesaid Application, the second party/Union is now not pressing the adjudication of the Industrial Dispute forming the subject-matter of the Reference.

15. Mr. Lancy D'Souza, learned counsel for the first party/Management states that the first party/Management has no objection to the prayer made on behalf of the second party/Union in the aforesaid Application being granted.

16. From the above narration of the facts as contained in the aforesaid Application and also keeping in view the statements made by the learned counsel for the Parties, as mentioned above, it is evident that the Industrial dispute forming the subject-matter of the present reference no longer survives.

17. Reference is, therefore, answered by stating that the Industrial Dispute forming the subject-matter of the reference no longer survives.

18. Award is passed accordingly.

Justice S.P. MEHROTRA, Presiding Officer

नई दिल्ली, 30 जून, 2015

SCHEDULE

का.आ. 1329.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ सं. 63/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं. एल-12012/70/2002-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2015

S.O. 1329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 30/06/2015.

[No. L-12012/70/2002-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

Dated : 13th March, 2015

Present : Shri S. N. Navalgund,
Presiding Officer

C R No. 63/2002

I Party	II Party
Sh. K. S. Subramanyam, No. 14, Sanjeevini, II Main Road, Khadi Layout, Kathrigupe Main Road, Bangalore-560 085.	The Deputy General Manager, Canara Bank, Disciplinary Action Cell, Circle Office, No. 86, M. G. Road, Bangalore-560 001.

Appearances

I Party	: Shri V. S. Naik, Advocate
II Party	: Shri T. R. K. Prasad, Advocate

AWARD

1. The Central Government *vide* Order No. L-12012/70/2002-IR(B-II) dated 15.11.2002 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule:

"Whether the management of Canara Bank is justified in terminating the services of Shri K. S. Subramanyam, Ex-Clerk *w.e.f* 26.11.1993? If not, what relief the workman is entitled to and from which date?

2. The II party in its counter statement in justifying its action asserts that I party who was working a Clerk at its Devanahalli Branch proceeded on one day's leave on 08.07.1993 on the ground of his Mother's Ceremony but did not report to duty on the next working day and remained absent without submitting any leave application unauthorisedly as such a letter was addressed to him dated 05.08.1993 to report to duty within 3 days from the date of receipt of that letter and also to show cause why appropriate action should not be initiated against him and the I party though received the said letter did not give any reply or report to the duty and continued to remain absent without submitting any leave application as such another letter dated 06.09.1993 was addressed to him to report for duty immediately and to show cause why disciplinary action should not be initiated by 15.09.1993 and as he did not give any reply or resume to duty another letter dated 27.10.1993 was addressed to him to report to duty immediately and to submit his reply immediately as to why action should not be taken for his unauthorised absence further stating that in case he failed to respond it would be treated that he has no intention to rejoin the duty and has voluntarily retired from the service and as he did not respond to that letter also and chosen to remain absent the proceedings dated 29.12.1993 were drawn treating as voluntarily abandoned the service *w.e.f* 26.11.1993. It is further asserted that even after communication of the said proceedings he failed to respond but chosen to file a writ petition bearing No. 17736/1996 and subsequently in the year 2000 raised the dispute before ALC(C), Bangalore with a lapse of about 7 years and the Central Government on his submission of the failure report having chosen to make this reference in the year 2002 it is not maintainable and he is not entitled for any relief. INTER-ALIA, the I party in his claim statement asserts that he being an Ex-serviceman joined the services of the II party in the year 1979 as Clerk and proceeded on casual leave on 08.07.1993 while working at its Devanahalli Branch to attend his Mother's Ceremony and as he fell sick he sent a leave application on 10.07.1993 accompanied by medical certificate obtained from the District Surgeon, Victoria Hospital for Infective Hepatitis being advised to take rest for 48 days but to his surprise without referring to his leave application a letter was received by him dated 05.08.1993 to report for duty within 3 days and to that letter he gave a reply dated 15.08.1993 expressing his inability to resume duties due to his illness and that he would report on 01.09.1993 and even by 01.09.1993 since he did not recover fully he addressed a letter dated 13.09.1993 enclosing copy of the medical certificate obtained from District Surgeon, Victoria Hospital seeking further leave for a period of

41 days and again without any reference to his leave application dated 08.07.1993 and 13.09.1993 a letter was received by him dated 06.09.1993 to report to duty and subsequently another letter dated 27.10.1993 wherein it was informed that they will presume voluntary cessation from employment under Clause 17 of V Bipartite Settlement and another letter dated 12.11.1993 directing to report for duty and submit his explanation for being unauthorised absent and then by his letter dated 15.11.1993 he requested to extend his leave till 03.12.1993 communicating his illness but in spite of it without any reference to his leave applications a letter was sent to him dated 29.12.1993 stating that he has voluntarily retired from the service of the Bank w.e.f. 26.11.1993 and that his absence from 08.07.1993 to 26.11.1993 will be treated as without leave and pay. On receipt of that letter dated 29.12.1993 he approached the Hon'ble High Court of Karnataka in W P No. 17736/1996 and as same came to be disposed off on 11.02.1999 directing him to raise a dispute under ID Act he approached the ALC(C), Bangalore for conciliation and as he submitted failure report on 04.04.2002 it resulted in this reference. He further asserting that he being not gainfully employed the II party be directed to reinstate him into service with continuity of service and all other consequential benefits.

3. After completion of the pleadings when the II party was called upon to lead evidence the learned advocate appearing for the II party while filing the affidavit of Sh. N. Nagendra working in the Staff Section at the Circle Office, Bangalore reiterating the assertion made in the counter statement by examining him on oath got marked letter dated 05.08.1993 from Staff Section (workmen), Bangalore to I party; letter dated 12.08.1993 from Senior Manager to I party advising I party to report for duty; letter dated 06.09.1993 informing I party to report for duty within 15.09.1993; letter dated 27.10.1993 from Senior Manager to I party instructing him to report for duty or his absence would be treated as voluntary cessation of employment under clause 17 of V Bipartite Settlement and proceedings of the General Manager dated 29.12.1993 as Ex M-1 to Ex M-5. INTER-ALIA, the learned advocate appearing for the I party while filing the affidavit of the I party reiterating the assertion made in the claim statement got marked the Office Copy of the leave letter purported to have addressed by him to the General Manager, Bangalore Circle, Staff Section, Bangalore dated 10.07.1993 through Senior Manager, Devanahalli Branch; the OPD Slip pertaining to him of Victoria Hospital, Bangalore dated 15.07.1993; the certificate dated 15.07.1993 issued by Surgeon Admn. of Victoria Hospital, Bangalore certifying that he require rest and treatment for 48 days from 15.07.1993 to 31.08.1993; office copy of the leave letter purported to have been addressed to the Deputy General Manager dated 15.08.1993 seeking extension of leave till 31.08.1993 through Senior Manager, Devanahalli Branch; the certificate dated 01.09.1993 issued by Surgeon Admn. of Victoria Hospital, Bangalore certifying

that he require rest and treatment for 41 days from 01.09.1993 to 31.10.1993; office copy of the letter addressed by him to Staff Section dated 13.09.1993 requesting for extension of leave up to 31.10.1993 through Senior Manager, Devanahalli Branch and three certificates of posting dated 12.07.1993, 13.09.1993 and 18.08.1993 under which he claims to have forwarded leave letter with medical certificates as Ex W-1 to Ex W-9 respectively.

4. With the above pleadings and evidence the arguments of learned advocates appearing for both sides were heard.

5. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides in the light of the arguments put forward by both the sides, I have arrived at conclusion the action of the management treating that I party has voluntarily abandoned the service w.e.f. 26.11.1993 is not justified and that he is entitled for reinstatement with 50% of backwages from the date of reference i.e. 15.11.2002 with continuity of service and other consequential benefits for the following:

REASONS

6. There is no dispute that I party who was working as Clerk at the Devanahalli Branch having proceeded on one day's casual leave on 08.07.1993 to attend his Mother's Ceremony and subsequently he did not resume duty and according to the management he who remained absent since did not send any leave application or medical certificate and in spite of its letters dated 05.08.1993, 06.09.1993 and 27.10.1993 he did not respond ultimately on 29.12.1993 they drew a proceedings he having voluntarily abandoned the job w.e.f. 26.11.1993. On the other hand it is the case of the I party that he who proceeded on one day's casual leave to attend his mother's ceremony since fell sick on 10.07.1993 he forwarded a letter of request with medical certificate for extension of a weeks leave and as he could not recover from the illness he took treatment at Victoria Hospital, Bangalore wherein he was advised to take rest till 31.08.1993 and accordingly through his letter dated 15.08.1993 he requested for extension of leave till 31.08.1993 and again since he was advised to take treatment and rest till 31.10.1993 he sent another letter of request dated 13.09.1993 for grant of leave up to 31.10.1993 and ignoring all these letters and the medical certificates the impugned proceedings dated 29.12.1993 came to be drawn treating him having voluntarily abandoned the service. The evidence of postal certificate do probabalize the assertion made by the I Party having sent leave applications as claimed by him from time to time and they are also supported by the certificates issued by the Medical Officers of the Victoria Hospital, Bangalore. Therefore, the case of the II Party that after proceeding on leave on 08.07.1993 he did not send any leave application and even did not respond to its letters dated 05.08.1993, 06.09.1993 and 27.10.1993 is unacceptable. When the I Party who proceeded on leave on 08.07.1993 to attend his mother's ceremony when sent letters dated

10.07.1993, 15.08.1993 and 13.08.1993 seeking extension of leave on medical ground the II Party ought to have made some orders on those applications and communicate to him. In the event the II Party were to Reject his request for extension of leave as sought for by him on medical grounds he remaining absent would have amounted to unauthorised absence. Since the pleadings and evidence of the II Party do suggest that they have not at all taken into consideration the leave applications forwarded by the I Party, their assertion that he voluntarily abandoned the service and accordingly the proceedings dated 29.12.1993 were to be drawn is unjust and illegal. In the result, I have arrived at conclusion that the management of Canara Bank is not justified in terminating the services of Sh. K.S. Subramanyam, Ex-clerk *w.e.f.* 26.11.1993 under the guise of having voluntarily abandoned the service and that he is entitle for reinstatement. Since the I Party immediately after the communication of the proceedings dated 29.12.1993 did not either prefer any appeal to the Appellate Authority or approached the conciliation officer and only after three years he approached the Hon'ble High Court of karnataka in the year 1996 by filing WP No. 17736/1996 and on its dismissal by order dated 11.02.1999 he approached the Conciliation Officer in the year 2000, I feel it just and appropriate to award him 50% of the Backwages from the date of reference which is dated 15.11.2002 and continuity of service and other consequential benefits. In the result, I pass the following.

ORDER

The management of Canara Bank is not justified in terminating the services of Sh. K.S. Subramanyam/I Party *w.e.f.* 26.11.1993 under the guise of he voluntarily abandoning the services by drawing proceedings dated 29.12.1993 and that he is entitle for reinstatement with 50% of backwages from the date of reference *i.e.*, 15.11.2002 with continuity of service and other consequential benefits. In case he has attained the age of superannuation 50% of backwages and continuity of service shall be till the date of attaining superannuation.

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 30 जून, 2015

S.O. 1330.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (संदर्भ सं. 54/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं एल-12011/16/2014-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2015

S.O. 1330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the industrial dispute between the management of Dana Bank and their workmen, received by the Central Government on 30/06/2015.

[No. L-12011/16/2014-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 54 of 2014

parties: Employers in relation to the management of

Dena Bank

AND

Their workmen.

Present: Justice Dipak Saha Ray,
Presiding Officer

Appearance:

On behalf of the Management : None.

On behalf of the Workmen : None.

State: West Bengal.

Industry: Banking

Dated. 19th June, 2015.

AWARD

By Order No. L-12011/16/2014-IR(B-II) dated 24.06.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Dena Bank is justified (1) in violation to the agreement (tripartite) arrived at on conciliation by Honourable Assistant Labour Commissioner (Central) on 19th September 2003 and (2) demand for creation of Special Assistant Post of 20% of the promotion of JMG Scale-I is legal and/or justified? What relief the workmen are entitled?

2. When the case was taken up for hearing on 16.06.2015 none appeared on behalf of either of the parties. It appears from the record that the Union/Association who raised the industrial dispute, first appeared in this case on 19.11.2014 and thereafter has not turned up for four consecutive dates.

3. Considering the above facts and circumstances and the conduct of the Union/Association it may reasonably

be presumed that the concerned Union/Association is not willing to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. The present reference is accordingly disposed of by passing a "No Dispute Award."

Justice DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 19th June, 2015

नई दिल्ली, 30 जून, 2015

का.आ. 1331.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन मरीटाईम युनिवर्सिटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 116/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं एल-33012/06/2014-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2015

S.O. 1331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Maritime University and their workmen, received by the Central Government on 30/06/2015.

[No. L-33012/06/2014-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 29th April, 2015

Present: K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 116/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian maritime University and their workman]

BETWEEN

Sri M. Arumugam : 1st party/Petitioner
AND

The Management : 2nd Party/Respondent
Indian Maritime University
Uthandi
Chennai-600119

Appearance:

For the 1st Party/Petitioner : Absent

For the 1st Party/Respondent : Absent

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-33012/06/2014-IR (B.II) dated 19.11.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Indian Maritime University regarding termination or dismissal of the service of the petitioner, Sri M. Arumugam is justifiable or not? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 116/2014 and issued notices to both sides.

3. The petitioner has received notice in the ID. However, he has not cared to enter appearance. So the reference is only to be closed.

Accordingly, the reference is answered against the petitioner. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 30 जून, 2015

का.आ. 1332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, कोलकता के पंचाट (संदर्भ सं. 53/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं एल-12011/18/2014-आईआर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2015

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 30.06.2015.

[No. L-12011/18/2014-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 53 of 2014

Parties : Employers in relation to the management of
Dena Bank

And

Their Workmen

Present : Justice Dipak Saha Ray,
Presiding Officer

Appearance :

On behalf of the Management : None
On behalf of the Workmen : None
State : West Bengal Industry : Banking
Dated the 19th June, 2015

AWARD

By Order No. L-12011/18/2014-IR(B-II) dated 24.06.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Dena Bank is justified in not identifying the Krishnanagar Branch for the post of Special Assistant and allowing Special Assistant Allowance is legal and/or justified? What relief the workmen are entitled?"

2. When the case was taken up for hearing on 16.06.2015 none appeared on behalf of either of the parties. It appears from the record that the Union/Association who raised the industrial dispute, first appeared in this case on 19.11.2014 and thereafter has not turned up for four consecutive dates.

3. Considering the above facts and circumstances and the conduct of the Union/Association it may reasonably be presumed that the concerned Union/Association is not willing to proceed with the case further. So on, fruitful purpose will be served in keeping the matter pending.

4. The present reference is accordingly disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHARAY, Presiding Officer
Dated: The 19th June, 2015, Kolkata.

नई दिल्ली, 30 जून, 2015

का.आ. 1333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 42/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2015 को प्राप्त हुआ था।

[सं एल-29024/1/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workmen, which was received by the Central Government on 15.06.2015.

[No. L-29024/1/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 10th February, 2015

Present : Shri S. N. Navalgund,
Presiding Officer

C R. No. 42/2012

I Party

Sh. Pampavathi & others, S/o Virupakashappa, Ubbalgundi (V), Rajapur (PO), Sandur (Tq), Bellary Distt.

II Party

1. The Managing Director, GSP Infratech Dev. Ltd. , 101, Siva Sai Sannidhi, Plot No. 32, Opp. Shirdi Saibaba Temple, HIndinagar, Panjagutta, Hyderabad

2. The General Manager, Mysore Minerals Limited, Near KSRTC Bus Stand, Sandur Taluk - 583 119, Bellary District.

Appearances :

I Party : None
 II Party No. 1 : Shri G. Baburao Advocate
 II Party No. 2 : None

AWARD

1. The Central Government *vide* Order No. L-29024/1/2012-IR(M) dated 21.09.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Are the workmen (Pampavathi and others) of GSP Infratech Limited, deprived of the actual privileges and benefits from their contractors? What relief the workmen are entitled to?"

2. On receipt of the reference while registering it in C R 42/2012 when notices were issued to both the parties, II Party No. 1 entered its appearance through Sh. G. Baburao, advocate, whereas, I Part and II Party No. 1 inspite of due service of notice through RLAD did not appear and file their claim and counter statement. Since the I Party failed to put in his appearance and file the claim statement when the II Party was called upon to file statement substantiating the action taken against the I Party workmen they filed their statement contending that they had obtained an agreement for mining at Ubbalagundi Village, Bellary from M/s. Mysore Minerals Limited/II Party No. 1 for mining of Iron Ore and obtained licence from RLC(C), Bellary and since the mining operation were stopped permanently from 16.09.2011 the mine was kept under C Category and the Licence got cancelled as per the direction of Hon'ble Supreme Court of India and as per the statutory norms 45 days of salary *i.e.* 50% Basic + DA was paid to the workers as compensation and same was intimated to RLC(C), Bellary and out of 65 workers 56 workers were laid off and remaining workers were deployed in different projects of Karnataka State. The I Party workmen approached the RLC(C), Bellary stating that they have received only 25% instead of 50% of salary as layoff compensation which ended up in failure of conciliation and gave rise to this dispute.

3. The II Party No. 1 in order to substantiate its contention filed the affidavit of Sh. R. Narayana, Vice President

(Marketing) as MW 1 (M) reiterating the contentions of the counter statement and got exhibited letter of authorization issued by the Director of II Party No. 1; Notarized copied of agreement between MML and II Party NO. 1 dated 22.01.2004; license issued by RLC(C), Bellary dated 31.03.2011; Notice of temporary suspension of mining operations issued by MML dated 21.06.2011; letter of II Party No. 1 intimating RLC(C), Bellary regarding closure of mines dated 16.09.2011; Two salary sheets for the month August and September 2011 of the I Party; letter of II Party No. 1 intimating RLC(C), Bellary regarding layoff of workmen under Rule 75A of ID Act, 1947 dated 24.07.2011; letter of II Party No. 1 intimating RLC(C), Bellary regarding action taken report on payment of laid off compensation date 29.10.2011; letter of clarification from II Party No. 1 of RLC(C), Bellary dated 06.03.2012; FOC report dated 02.04.2012 submitted by RLC(C), Bellary as Ex M1(M) to Ex M-11(M) respectively and closed his side. Since the I Party and II Party No.2 did not appear and cross-examine the witness when the matter came to be posted for arguments counsel for II Party No. 1 filed his written arguments.

4. Since the I Party failed to enter appearance, file claim statement and to controvert counter statement and evidence of the II Party No. 1, there is no material they being deprived of the actual privileges and the benefits from the contractors and they being entitle for any relief. In the result, the reference fails and I pass the following.

ORDER

The reference is rejected holding that the I Party workmen failed to establish being deprived of the actual privileges and benefits from their contractors.

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1334.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कॉरपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 22/2003) प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं.एल-30012/28/2003-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2003) of the Central Government Industrial Tribunal/Labour Court, Kolkata now

as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 15/06/2015.

[No. L-30012/28/2003-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 22 of 2003

Parties : Employers in relation to the management of
Indian Oil Corporation Ltd., Haldia Refinery

AND

Their workmen.

Present : Justice Dipak Saha Ray,
Presiding Officer

Apperance :

On behalf of the Management	: Mr. N.K. Mehta, Ld. Counsel.
On behalf of the Workman	: Mr. G. Mastafa, Ld. Counsel.
State: West Bengal.	Industry : Petroleum.
Dated: 3rd June, 2015	

AWARD

By Order No. L-30012/28/2003-IR (M) dated 14.08.2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10 (1) (d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Indian Oil Corporation Ltd. (Haldia Refinery) in not regularizing the services of Mrs. Aloka Seth is justified? If not, to what relief the workman concerned is entitled?"

2. The relevant facts of the concerned workman, in short, are that in 1978 she was engaged by the Indian Oil Corporation Limited (hereinafter referred to as management) for janitorial service at Durgachak Colony in place of her husband Dulal Chandra Seth and accordingly since 1978 she has been working as a Sweeper in the buildings of Durgachak Housing Estate of the management and is getting montly wages. It is also the case of the workman that in spite of her repeated prayers for absorbing her as permanent employes, her service has not been regularized but her service is extended from time to time without regularizing her service. Accordingly the workman raised industrial dispute challenging the action of the management. Hence this reference.

3. The management has opposed the claim of the workman by filing written statement contending *inter alia*

that there is no employer and employee relationship between the management and Smt. Aloka Seth and that she was an independent contractor who was awarded contract on janitorial service from February to April, 1978 on agreed consideration and that she was never engaged by the management either as a casual or a contract labour. The management has further contended that Smt. Aloka Seth was a mere contractor and as such the question of regularization of her alleged service does not arise at all. Accodngly, it is prayed that the instant reference may be answered in the affirmative.

4. The concerned workman has examined two witnesses including herself and has also proved two documents viz. Exhibits W-01 and W-02 in support of her case.

5. The management in support of its case also examined one witness and proved one document viz. Ext. M-01.

6. It is the case of Smt. Aloka Seth who is claiming herself as the workman that she was engaged by the management to work as Sweeper at Durgachak Colony in place of her husband. Her two witnesses, namely, Baikuntha Mondal and Raghunath Betal in their oral testimony have corroborated the above contention of Smt. Seth. The said witnesses have also stated in their oral evidence that Smt. Seth is an employee of the Indian Oil Corporation Ltd., Haldia Refinery and is getting salary month by month. The cross-examination of both the witnesses goes to show that they have no knowledge about the statements made in their respective affidavits-in-chief and that they have signed the affidavits as they were also instructed. One of the witness, namely, Baikuntha Mondal in this cross-examination even has stated that "It is fact that Smt. Aloka Seth was not an employee of Indian Oil Corporation but she used to work there on contract basis though the work to be done by her was prescribed by the Indian Oil Corporation." It if also interesting to note that no document is forthcoming from the side of Smt. Seth that she is/was getting wages form the I.O.C. month by month. Smt. Seth has also failed to produce any document to establish that after the death of her husband management appointed and/or engaged her the said janitorial service in place of her husband.

7. On the contrary, the witnesses of the management, namely Pratap Singh in his oral evidence has specifically stated the Smt. Aloka Seth was awarded a contract against her Bid/letter dated 14.02.1978 for janitorial service at Duragachak Colony for the period from 09.02.1978 to 31.03.1978. Thereafter the said contract was extended for one month only. It is the specific case of the management that Smt. Aloka Seth was an independent contractor and she was never engaged and/or appointed to work as Sweeper and as such there was no employer-employee relation between the management and Smt. Seth.

8. Here, in this case, Smt. Seth has proved two documents in support of her case viz. Exhibits W-01 and W-02. From the said two documents it appears that Smt. Seth was awarded the contract for janitorial service from 09.02.1978 to 31.03.1978. As per the said contract she was permitted to engage at least three persons and for that reason management was agreed to pay a sum of Rs. 600/= per month. Exhibit W-02 goes to show that the said contract was subsequently extended for a further period of one month w.e.f. 01.04.1978.

9. The said two documents of Smt. Seth do not go to show that Smt. Seth was appointed by the management to do the work of a Sweeper and that she was/is getting salary/waged from the management.

10. Smt. Seth in this case has also failed to produce any scrap of paper to establish that even after the expiry of the extended period of contract of one month she was allowed to work as Sweeper of the Corporation and was getting salary/wages for such work. No document is also forthcoming from the side of Smt. Seth to establish that the post of the said Sweeper (in which post she is claiming to have been working) is a sanctioned post.

11. In this case as Smt. Seth is claiming that she is/was the employee of the management and is/was getting salary/wages from the management month by month, initial burden is upon Smt. Seth to establish the said contention. But, she has miserably failed to establish that she was even engaged and/or appointed by the management to work as Sweeper and that for such work she used to get remuneration.

12. So, it appears, that Smt. Seth has failed to establish that there was any employer and employee relationship between the management and herself.

13. Accordingly, the instant reference is answered in the affirmative and Smt. Seth is not entitled to any relief whatsoever.

JUSTICE DIPAK SAHARAY, Presiding Officer

Dated, Kolkata,

The 3rd June, 2015

नई दिल्ली, 30 जून, 2015

का.आ. 1335.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गुरदीप स्टोन वर्क्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1, धनबाद के पंचाट (संदर्भ संख्या 44/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं.एल-29011/21/2004-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/2004) of the Central Government Industrial Tribunal/Labour Court 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Gurdeep Stone Works and their workman, which was received by the Central Government on 15/06/2015.

[No.L-29011/21/2004-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD.

In the Matter of a Reference U/S 10 (1) (D) (2A) of I.D.
Act, 1947.

Ref. No. 44/2004

Employers in relation to the management of M/s Gurdeep
Stone Works, Pakur

And

their workman

Present: - Sri Ranjan Kumar Saran,

Presiding Officer

Appearances :

For the Employers. : None

For the workman. : Sri S.N. Ghosh, Advocate.

State: - Jharkhand

Industry : Stone

Dated. 30/3/2015

AWARD

By Order No. : L -29011/21/2004-IR (M), dated 28/05/2004, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes, Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of M/s Gurdeep Stone Works, Pakur in not allowing Sri Barjan Seikh, Sabdul Seikh, Moharam Shiekh, Bhutan Rajbansi and Mansard Seikh (all Miners) to work in the establishment on the plea that they are over aged refusing to accept the documentary evidence submitted by the union in support of their age is legal and or justified? If not, to what relief the above said workman are entitled to?"

2. The case is received from the Ministry of Labour on 16.06.2004. After receipt of the reference, both parties are noticed. The workman files their written statement on

26.05.2005. Thereafter the management files their written statement-cum-rejoinder on 07.02.2006. Document filed by the workmen and marked as W-1 to W-3 series.

3. The Short point to be decided in the case is as to whether after the Company taken over by the new management, the concerned workmen, Form B register was manufactured and their age as prevalent in old B Form register was raised, and as such they were retired Prematurely.

4. In this case no evidence was adduced by the management and none appears to put forth their claim. Therefore there is no reason to disbelieve the version of the workmen.

5. Therefore the workmen age be determined as per their age in the Form B register available and they be accordingly taken in job and those who have been already retired in the meantime as per the age of Form B register, they be given the full back wages and retirement benefits.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1336.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एरोड्रोम/महेन्द्र एसोसिएट्स/यूनिवर्सल ट्रेडिंग कं. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 91/03) प्रकाशित को करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं एल- 11011/11/2000-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/03) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Civil Aerodrom/Mahendra Associates/Universal Trading Co. and their workman, which was received by the Central Government on 15/06/2015.

[No. L-11011/11/2000-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT,
JABALPUR**

No. CGIT/LC/R/91/03

Shri Bhavani Pushpad,
S/o Shri Ramprasad Pushpad,
Near Nazarbagh Rajagar,
Chhattarpur,
Distt. Chhattarpur

...Workman

Versus

Sr. Aerodrome Officer,
Civil Aerodrom,
Khajuraho,
Distt. Chhattarpur (MP)

M/s. Mahendra Associates, contractor,
Terminal Building 21,
Vidhan Sabha Marg, Lucknow
M/s. Universal Trading Co.

Distt. Hardoi,
Hardoh (UP)

...Management

AWARD

Passed on this 14th day of May, 2015

1. As per letter dated 4.4.03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-11011/11/2000-IR(M). The dispute under reference relates to:

"Whether the action of the management of Civil Aerodrome, Senior Aerodrome Officer, Khajuraho, Distt. Chhattarpur (MP) in terminating the service of Shri Bhavanidin Pushpad is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he passed 11th standard in 1985. From 13.1.91, he was engaged as Khalasi/helper on establishment of IInd party. That Ist party workman was continuously working from 13.1.91 to 31.7.97 at Civil Aerodrome, Khajuraho. The documents about his working are in custody of IInd party. Workman have complained about payment of less wages to its employees. The complaint was submitted to Labour Commissioner on 9.9.96. IInd party management annoyed by said complaint discontinued the workman from 1.8.97, His services were orally discontinued. One Nandkishore Sen and Ramesh Chand Raikwar junior to him were continued as Khalasi. They were continued as Wireman and AC Mechanic. Workman further submits that about 25,000 employees are working in all over establishment of IInd party. 150 employees are working at Civil Aerodrome, Khajuraho. Services of workman are illegally terminated. The Govt. has made referene only after directions issued by

Hon'ble High Court in Writ Petition No. 276/02. On such contentions, Ist party workman is praying for his reinstatement with backwages.

3. IInd party filed Written Statement at Pages 12/1 to 12/4 opposing claim of the workman. IInd party raised preliminary objection that Ist party workman was not appointed or engaged by IInd party. IInd party is an instrumentality of state for smooth functioning of airports all over country. IInd party Nos. 2 & 4 are working under IInd party No. 3 for running 70 KW at ADG set, annual maintenance contract was given to M/s Mahindra Associates and thereafter M/s Universal Trading Company. Workman was working under above contractors as Khalasi. Workman was never engaged by Ist party. He is not an employee of IInd party. After completion of contract on Universal Trading Company on 31.7.97, further maintenance contract was awarded to new contractor. New contractor do not engage workman. That workman engaged by contractor cannot claim protection of Section 25-F of ID Act against IInd party. Workman had vide proceedings under Section 20(2) of Minimum Wages Act, the contractors were included as party. The order was passed in favour of workman is challenged by IInd party filing Writ Petition 1864/4. It is reiterated by IInd party that workman was engaged by above named contractors. New contractor did not engage workman. Workman was not appointed or terminated by IInd party therefore workman is not entitled to any relief against IInd party.

4. It appears that IInd party had filed application for impleading contractors as party to the dispute under referene. However the contractors were not employed as party. Ist party filed rejoinder at Pages 14/1 to 14/4. Ist party workman has contented that he was working under contractors who were carrying the work of job of the municipal *i.e.* IInd party. That as per provisions available with the contractor, a new contractor was bound to engage the earlier workers. The discontinuation of workman after engagement of new contractor amounts to unfair labour practice. Workman is retrenched in violation of provisions of ID Act. His discontinuation of service is illegal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

“(i) Whether the action of the management of Civil Aerodrome, Senior Aerodrome Officer, Khajuraho, Distt. Chhattarpur (MP) in	Management of IInd party has not engaged or terminated workman.
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terminating the services of Shri Bhavanidin Pushpad is justified?

(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.”
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6. Workman is challenging termination of his service in violation of Section 25-F of ID Act contending that he was continuously working as Khalasi during 13.1.91 to 31.7.97. His service were orally terminated without notice, he was not paid compensation. Management has contented that workman was engaged by contractors M/s. Mahendra Associates and M/s. Universal Trading Company were not employed as party.

7. Workman filed evidence. Workman in his affidavit of evidence says he was appointed as Generator Operator through nominated contractor on regular pay and allowances. He rendered services from 13.1.91 to 30.1.94, 1.2.94 to 31.7.97 as Khalasi. That he filed proceedings under MW Act. That as per contract agreement, whenever contractor is changed, it was obligation for new contractor to continue with old staff and their services cannot be terminated without permission of Principal Employer. That his services were illegally terminated from 1.8.97. Notice was not issued to him. Provisions of Section 25-F of ID Act were violated. Workman in his cross says he was not given appointment letter, his wages were paid by D.P. Notia Jr. Engineer. Payment was made in cash without obtaining any receipt from him. Workman says he is not having any pays slips. Termination order was not issued to him. He denies that he was working with Mahendra Associates from 13.1.91 to 30.1.94. Rather he re-affirmed that he was working with authorities of IInd party. After termination of his service in 1997, he was working as Electrician. Workman in his further cross examination says that he has produces documents like experience certificate, Identity Card, verification of employment office. He filed proceeding before authority under Minimum Wages Act, the order was passed in his favour. Copy of order passed by authority under MW Act is produced at Exhibit M-3. It clearly shows that contractors M/S Mahendra Associates and M/s. Universal Trading company were impleaded as opponent No. 3,4. The order finds observation that when contractors have left the work, payment should be made by the Principal Employer. The evidence of workman that he was working under authority of IInd party is falsified from document M-3 referred above.

8. Management's witness Tapan Kumar Swain supported contentions of IInd party that workman was engaged by contractors. That contractors were engaged through NNIT process. Evidence of management's witness

remained unchallenged. Agreement Exhibit M-2 does not show any clause that employees engaged by earlier contractor were to be continued on work by the new contractor. The evidence of management's witness further supported by order passed by Authority under MW Act. Exhibit M-3 that the Ist party workman was engaged by contractors. Despite application was submitted by IInd party for impleading contractors as parties, Ist party did not take any steps. Evidence on record shows that the workmen was not appointed or engaged by IInd party. His services were not terminated by IInd party. The proper parties are not impleaded by workman despite application was submitted by management of IInd party. Considering the evidence, I record my finding in Point No.1 that the Ist party workman was not engaged or terminated by IInd party.

9. Point No. 2— as Ist party is not engaged or terminated by IInd party, the pleading and evidence of workman is silent about the agreement/ contract between IInd party and the contractors who engaged Ist party was sham and bogus. Workman is not entitled to any relief against IInd party. Accordingly, I record my finding in point No.2.

10. In the result, award is passed as under"—

- (1) The workman was neither engaged nor terminated by the IInd party management.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सेसा गोवा लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1, मुंबई के पंचाट (संदर्भ संख्या 24/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं. एल- 29011/63/2013-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2014) of the Central Government Industrial Tribunal/Labour Court 1, Mumbai now as shown in the Annexure in the Industrial Dispute

between the employers in relation to the management of M/s. Sesa Goa Limited and their workman, which was received by the Central Government on 15/06/2015.

[No. L-29011/63/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

PRESENT :

JUSTICE S.P. MEHROTRA,
Presiding Officer

Reference No. CGIT-1/24 of 2014

Parties : Employers in the relation to the management of
Sesa Goa Ltd.

And

Their workmen

Appearances:

For the First party/Management : Mr. Girish K.
Sardesai, Adv.

For the Second party/Union : Mr. P. Gaonkar,
General Secretary

State : Maharashtra
Mumbai, the 1st day of June, 2015

AWARD

1. The present Reference has been made by the Central Government by its order dated 9.7.2014 passed in exercise of the powers conferred by clause (d) of sub-section (2A) Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the Schedule to the said order are as under:

"Whether the action of the management of M/s Sesa Goa Limited, in deducting the earned wages of the workers working at Codi Mine from the Month of April, 2013 onwards and who are not given the revision of 2008 Settlement, is legal and justified? What relief the workmen are entitled to?"

2. By the Order dated 30.7.2014, notice were directed to be issued to the parties fixing 9.9.2014

3. On 9.9.2014, Shri P. Gaonkar, General Secretary of the second party/Union put in appearance on behalf of the second party/Union. Shri Girish K. Sardesai, Advocate put

in appearance on behalf of the first party/Management. Statement of Claim was also filed on behalf of the second party/Union on the same date, i.e., 9.9.2014. Subsequently, an Application was filed on the behalf of the second party/Union on 24.11.2014 seeking amendment in the statement of Claim.

4. By the Order dated 6.1.2015, the aforesaid Amendment Application dated 24.11.2014 was allowed. Time was granted to the learned counsel for the first party/Management for filing Written Statement in reply to the statement of Claim as amended, as mentioned in the Order dated 6.1.2015.

5. Thereafter, Various dates were fixed in the matter for filing Written Statement on behalf the first party/Management. The case was lastly put up on 28.5.2015.

By the Order dated 28.5.2015, the case was directed to be put up on 1.6.2015 i.e. today. The case has accordingly been put up today.

7. Shri P. Goankar, General Secretary of the second party/Union and Shri Girish K. Sardesai, learned counsel for the first party/Management are present.

8. A Joint Application has been filed today on behalf of the second party/Union and the first party/Management. The Joint Application has been signed by Shri Girish K. Sardesai, learned counsel for the first party/Management and by Shri P. Gaonkar, General Secretary of the second party/Union.

9. It is, inter-alia, prayed in the Joint Application that Award be passed in the present Reference in terms of the Settlement/Memorandum of Understanding, copy whereof in annexed with the Joint Application. Alongwith the Joint Application, Memorandum of Understanding with annexures thereof has been filed. The Memorandum of Understanding has been signed by Shri P. Gaonkar, General Secretary of the second party/Union. The Memorandum of Understanding has also been signed by Shri Sovik Muzumdar, Deputy C.E.O of the first party/Management. The Memorandum of Understanding has also been signed by Shri Girish K. Sardesai, learned counsel for the first party/Management.

10. Shri Girish K. Sardesai, learned counsel for the first party/Management and Shri P. Gaonkar, General Secretary of the second party/Union state that the Award be passed in terms of the Memorandum of Understanding filed alongwith the aforesaid Joint Application.

11. In view of the averments made in the aforesaid Joint Application and in view of the Statement made above on behalf of both the parties, the Industrial Dispute forming

the subject-matter of the present Reference is decided in terms of the Memorandum of Undertaking enclosed with the aforesaid Joint Application.

12. The Reference is, therefore, answered by starting that the Industrial Dispute forming the subject-matter of the Reference is decided in terms of the Memorandum of Understanding filed alongwith the aforesaid Joint Application.

13. Award is passed accordingly. The aforesaid Memorandum of Understanding with annexures thereto filed alongwith the aforesaid Joint application, will form part of the Award.

Justice S. P. MEHROTRA, Presiding Officer

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT No. 1 AT MUMBAI**

Ref No. CGIT-1/24 of 2014

Sesa Goa Ltd.Employer/Party 1
v/s

Their Workmen Workmen/Party 2

May It Please your honour:

1. In the above matter, the parties above named have arrived at a Settlement /Memorandum of Understanding, copy of which is annexed hereto.

2. The parties above named humbly pray that a consent award may be passed in terms of the said Understanding/ Settlement.

Dated this 1st day of June, 2015

Employer/Party 1 Workman/Party 2

Advocate For Party 1 Representative for Party 2

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
No. 1 AT MUMBAI**

Ref. No. CGIT-1/24 of 2014

Sesa Goa Ltd.,Employer/Party I
V/s

Their WorkmanWorkman/Party II

MEMORANDUM OF UNDERSTANDING

1. The party no. I management arrived at a settlement dated 20.11.2008 in respect of charter of demands dated

08.03.2008 submitted by Sesa Goa Workers' Union. The party No. II Gomantak Mazdoor Sangh had also submitted a charter of demands dated 10.02.2008. The said charter is covered by the settlement dated 20.11.2008. When the majority Sesa Goa Workers' Union arrived at a settlement the management displayed a circular dated 24.11.2008 offering extension of the benefits of the settlement to even those employees of the company who were members of the minority. Gomantak Mazdoor Sangh provided they sign the proforma undertaking.

2. The party No. II union pursued their charter of demands and the issue of refusal of the Management to negotiate with the Gomantak Mazdoor Sangh on the charter of demands dated 10.02.2008 was referred to the Industrial Tribunal for adjudication as reference CGIT-2/03/2009. In the said reference the Party No. II Gomantak Mazdoor Sangh made an application for extension of the benefits of the settlement dated 20.11.2008 by way of interim relief. The said application was rejected.

3. Thereafter the Union filed a Writ Petition registered as WP No. 455 of 2010 before the High Court Judicature of Bombay at Goa challenging the said order. The Petition is presently pending.

4. Subsequent thereto the main reference CGIT-2/03/2009 itself was rejected. The award of the Industrial Tribunal dated 03.01.2012 rejecting the reference has been challenged before the High Court of Judicature of Bombay at Goa by filing Writ Petition No. 467/2012 and is pending before the High Court.

5. The Party No. II Gomantak Mazdoor Sangh had also raised a dispute with respect to the deduction of wages for not reporting on paid holidays though it is the subject matter of the earlier settlement dated 08.11.2001 and also the present settlement dated 20.11.2008. The reference was rejected and the Industrial Tribunal rejected the dispute by its award dated 31.03.2010 and the union preferred a Writ Petition no. 496/2010 challenging the said award of the Industrial Tribunal rejecting the reference. The Petition is presently pending.

6. In the meanwhile the workmen owing allegiance to the party No. II Gomantak Mazdoor Sangh gave signed undertaking and declaration in form annexed to the settlement dated 20.11.2008 — that the workmen who are signatory to the undertaking accepts the terms and conditions of the settlement and agrees to be bound by the obligation thereof.

7. As there was dispute in the matter of the implementation of the settlement the 20.11.2008 raised a

dispute which was referred to the this tribunal for adjudication.

8. The parties thereafter had bilateral discussion on the subject matter of reference with a view to arrive at an amicable settlement the terms of which areas under:

- a. the party No. II union agrees not to pursue and the challenge to the Findings of the Industrial Tribunal in the matter of not granting paid holidays to workmen, non-payment of wages availed by the workmen, re-imbursement of illegal deductions in writ petition No. 496/2010 presently pending in the High Court Judicature of Bombay at Goa and file an affidavit in the High Court to the affect (the copy of which is annexed).
- b. the Party No. II union agrees to withdraw write petition WP No. 455 of 2010 and No. 467/2012 presently pending in the High Court of Judicature of Bombay at Goa and file and affidavit in the High Court to that affect (the copy of which is annexed)
- c. the Party No. I company agrees to accept the undertaking annexed to the settlement given by the workmen owing allegiance to the Party No. II union and as referred to in earlier para 6 and pay the workmen the dues under the sttlement.
- d. In view of the above the party no. II union agree not to pursue the present reference and treat it as settled.
- e. The Parties agree to file the present understanding before the industrial tribunal with a prayer for an award in terms of the understanding.

Emplear Party I Party No. II Union
Adv for Party No. I Rep. for Party No. II - Union
Date : 1.06.15
Place : Mumbai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT GOA

Writ Petition no 496 of 2010

The Workmen of Sesa Goa Ltd.

Rep. by:

United Mines Workers' Union

Ponda-Goa.

.....Petitioner

V/s

M/s Sesa Goa Ltd. & another

.....Respondents

AFFIDAVIT

I, Shri Puti Gaonkar, major of age, General Secretary United Mine Workers Union, do hereby state on solemn affirmation as under:

1. I say that the subject matter of the present Petition is challenge to the award of the Central Government Industrial Tribunal dated 31.03.2010 rejecting the reference CGIT-2/15/2008.

2. I say that the terms of the reference in CGIT-2/15/2008 are as under:

"Whether the action of the Management of M/s. Sesa Goa Ltd. in transferring Shri Suraj Naik, Pandari Naik and 4 others from their Codli Mine is legal and justified? Whether the management of Sesa Goa Ltd. as committed any unfair labour practice as defined in entry 7 of the Schedule 5 of the ID Act, 1947? And whether not granting paid holidays to workmen, non-payment of wages for paid holidays availed by the workmen, reimbursement of illegal deductions and not recognizing United Mine Workers Union as a majority union by M/s. Sesa Goa Ltd. for their Codli Mine is legal and justified? If not, what relief the Union/workmen are entitled to?"

3. I say that the finding of the Industrial Tribunal on all the issues referred in the terms of the reference are against the Petitioner and the Petitioner has challenged the award on all the findings.

Hereto annexed and marked as Exhibit A is the copy of the terms of the reference dated 06.02.2008.

4. I say that the parties to the present petition are before the Industrial Tribunal in reference CGIT-1/24/2014 on alleged non implementation of settlement dated 20.11.2008.

Hereto annexed and marked as Exhibit B is the copy of the terms of the reference in CGIT-1/24/2014 dated 09.07.2014.

5. I say that the parties the Industrial Tribunal have filed consent terms for an amicable settlement of the reference CGIT-1/24/2014 dated 09.07.2014. Hereto annexed and marked as Exhibit C is the copy of the consent terms.

6. I say that as a concomitant part of the understanding, it has been agreed by the petitioner not to pursue and press the Findings of the Industrial Tribunal, rejecting the reference on the below mentioned issues:

"Whether not granting paid holidays to workmen, non-payment of wages availed by the workmen, re-imbursement of illegal dedications is legal and justified? If not to, what relief are the union members are entitled to?"

7. I therefore pray that an order may please be passed that the petitioner does not pursue press or challenge the findings of the Tribunal in the award in the matter on above mentioned issues.

I reiterate and confirm that all the contents of present affidavit are as per my say. I say that the contents of paragraphs 1 to 7 are based on my personal knowledge which I believe to be true.

Solemnly affirmed at Panaji-Goa on this 30th day of May 2015.

Identified by me

Deponent.

—Sd.—

—Sd.—

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Illegible

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT GOA

Writ Petition no. 455 of 2010

The Workmen of Sesa Goa Ltd.

Rep. by:

United Mines Workers' Union

Ponda-Goa.

.....Petitioner

V/s

M/s. Sesa Goa Ltd. & another

.....Respondents

AFFIDAVIT

I, Shri Puti Gaonkar, major of age, General Secretary United Mine Workers Union, do hereby state on solemn affirmation as under:

1. I say that the parties to the present petition are before the Central Government Industrial Tribunal in reference CGIT-1/24 of 2014 on alleged non implementation of settlement dated 20.11.2008.

Hereto annexed and marked as Exhibit A is the copy of the terms of the reference dated 09.07.2014.

2. I say that the parties before the Industrial Tribunal have filed consent terms for an amicable settlement of the reference CGIT-1/24 of 2014.

Hereto annexed and marked as **Exhibit B** is the copy of the consent terms.

3. I say that as a concomitant part of the understanding, it has been agreed by the petitioner not to pursue and withdraw the present petition.

4. I say that in view of the above the petitioner does not wish to pursue the present petition and an order may please be passed disposing the same as withdrawn.

I reiterate and confirm that all the contents of present affidavit are as per my say. I say that the contents of paragraphs 1 of 4 are based on my personal knowledge which I believe to be true.

Solemnly affirmed at Panaji-Goa on this 30th day of May '2015.

Identified by me

Deponent.

—Sd.—

—Sd.—

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Illegible

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY BENCH AT GOA**

Writ Petition no. 467 of 2012
General Secretary,
United Mines Workers' Union
Having its office at;
G-5, Macedo Appt, Tisk
Ponda-Goa.
V/s
Sesa Goa Ltd.
Sesa Ghor
20, EDC complex, Patto, Panaji,
Goa-403001

.....Petitioner

.....Respondent

AFFIDAVIT

I, Shri Puti Gaonkar, major of age, General Secretary United Mine Workers Union, do hereby state on solemn affirmation as under:

1. I say that the parties to the present petition are before the Central Government Industrial Tribunal in reference CGIT-1/24 of 2014 on alleged non implementation of settlement dated 20.11.2008.

Hereto annexed and marked as Exhibit A is the copy of the terms of the reference dated 09.07.2014.

2. I say that the parties before the Industrial Tribunal have filed consent terms for an amicable settlement of the reference CGIT-1/24 of 2014.

Hereto annexed and marked as **Exhibit B** is the copy of the consent terms.

3. I say that as a concomitant part of the understanding, it has been agreed by the petitioner not to pursue and withdraw the present petition.

4. I say that in view of the above the petitioner does not wish to pursue the present petition and an order may please be passed disposing the same as withdrawn.

I reiterate and confirm that all the contents of present affidavit are as per my say. I say that the contents of paragraphs 1 of 4 are based on my personal knowledge which I believe to be true.

Solemnly affirmed at Panaji-Goa on this 30th day of May 2015.

Identified by me

Deponent.

—Sd.—

—Sd.—

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Illegible

नई दिल्ली, 30 जून, 2015

का.आ. 1338.—औद्योगिक विवाद, अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड के प्रबंधन के संबंध में नियोजकों और

उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 918/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं. एल-30012/1/2004-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1338.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 918/2005) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to management of M/s. Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 15/06/2015.

[No. L-30012/01/2004-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH.**

Present: Shri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 918/2005

Registered on 13.09.2005

Sh. Inderjit Singh Bedi son of Sh. Darshan Singh Bedi,
r/o V.P.O. Sohian Kalan, Distt. Sangrur.

.....Petitioner

Versus

1. Chairman-cum-Managing Director, Bharat Petroleum Corporation Ltd., Bharat Bhavan, 4&6, Currimbhoy Road, Baliard Estate, Mumbai.
2. Deputy General Manager, (HRS), Bharat Petroleum Corporation. Ltd., 5th Floor, Sector-1, Plot No. A5&6, Noida (UP).
3. Territory Manager (Retail), (TM), Bharat Petroleum Corporation Ltd., Jind Road, Sangrur.

...Respondents

APPEARANCES:

For the workman

Sh. O.P. Batra, Adv.

For the Management

Sh. S. Kaushal, Adv.

AWARD

Passed on 17.4.2015

Central Government vide Notification No. L-30012/1/2004- IR(M) Dated 31.3.2004, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section

(2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the Management of Bharat Petroleum Corporation Limited, Sangrur in terminating the services of Sh. Inderjeet Singh S/o Sh. Darshan Singh w.e.f. 22.4.2003 without any notice and without any payment of retrenchment is illegal and unjustified? If so, to what relief the workman concerned is entitled and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was appointed as a Clerk with the respondent management at Sangrur on 26.6.1999, where he worked continuously and his services were terminated on 22.4.2003 without serving him any notice or paying him any retrenchment compensation. That the persons junior to him were retained in service. That his termination is illegal.

Respondent management filed written statement controverting the averments and pleaded that workman was never employed by it. That there is a procedure for appointing a person in the respondent management i.e. inviting the applications, conducting written test, interview and medical test. That there was no post of a clerk with the respondent Corporation and the workman was never paid any wages by it. Parties were given opportunities to lead their evidence.

Workman appeared in the witness box and filed his affidavit reiterating the stand taken by him in the statement of claim. He relied upon various photocopies of the documents placed on the record.

On the other hand the management has examined Sh. Radhey Shyam, who filed his affidavit reiterating the stand of the management taken in the written statement. He has placed on record photocopy of the attendance registers and payment sheets.

I have heard Sh. O.P. Batra, counsel for the workman and Sh. S. Kaushal, counsel for the management and perused the record.

The learned counsel carried me through the photocopies of the various documents to submit that the workman actually worked for the corporation and his services were arbitrarily terminated without payment of any compensation and he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added that workman claim that he was appointed as a Clerk w.e.f. 26.6.1999. The respondent management is a public sector undertaking and has certain rules and regulations for making the appointments. Nothing has come

on the file that any procedure was followed when the workman was appointed as a Clerk. Workman has himself admitted during cross-examination that he was not called for any interview and was not given any appointment letter. That he do not possess any record to establish that he was paid wages by the management who also did not deduct his PF. Thus there workman himself admits that no appointment letter was issued to him and nothing has come on the file that he was ever paid wages by the management and in the absence of this evidence, it cannot be said that he was ever appointed by the respondent management as a Clerk.

The documents relied upon by the workman do not advance his case in any way. The photocopy of the documents at page 1 to 420 are only debit and credit entry and nowhere the name of the workman appears. Similarly the receipts at page 421 to 755 are of Mittal Traders and do not show that workman ever worked with the respondent management. Similarly the documents at page 1024 to 1189 are the photocopies of the telephone bills which again do not advance the case of the workman. The photocopies of the gate passes at page No. 756 to 1023 also do not establish in any way that the workman was an employee of the corporation.

On the other hand Sh. Radhey Shyam examined by the management produced the attendance register MW1/1 and the payment sheets MW1/2 and the name of the workman do not figure anywhere which further show that the workman was not ever employed by the respondent corporation.

In result, it is held that the workman has failed to prove that he was ever employed by the respondent corporation and being so, it cannot be said that the services were terminated by it.

In result, the reference is answered against the workman holding that he is not entitled to claim any relief from the Corporation. Let hard and soft copy of the award be sent to the Central Government for information and further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रिलाईन्स लाईफ इन्श्योरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 58/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं० एल-17012/27/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2014) of the Cent. Govt. Industrial Tribunal/Labour Court] Chennai now as shown in the Annexure, in the industrial Dispute between the employers in relation to the management of M/s. Reliance Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 15/06/2015.

[No. L-17012/27/2014-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 20th April, 2015

Present: K.P. PRASANNA KUMARI,
Presiding Officer

INDUSTRIAL DISPUTE NO. 58/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. Reliance Insurance Co. Ltd. and their workman)

BETWEEN

Sri J.G. John Jeba Sobin : 1st Party/Petitioner
AND Union

1. The Deputy Zonal HR : 2nd Party/1st
Manager Respondent
M/s. Reliance Life Insurance
Co. Ltd.
No. 114, Mena Kampala Arcade
Sir Thyagaraja Road, T. Nagar
Chennai-600017

2. The Branch Manager : 2nd Party/2nd
M/s. Reliance Life Insurance Respondent
Co. Ltd.
15/64A, Ground Floor,
Palace Road
Thuckalay-629175
Kanyakumari District

3. The Regional Manager : 2nd Party/3rd
M/s. Reliance Life Insurance Respondent
Co. Ltd.
13/10, Rliance House,
1st Flood
Near Anna Bus Stand
Subburaman Street,
Gandhi Nagar, Madurai-825020

APPEARANCE:

For the 1st Party/Petitioner : M/s. S. Arunachalam
Associates, Advocates

For the 2nd Party/Respondents : M/s. V.S. Manjula,
Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/27/2014-IR (M) dated 09.07.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of M/s Reliance Insurance Co. Ltd. in terminating the services of Sri J.G. John Jeba Sobin is justified? it not, to what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 58/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed a rejoinder in reply to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner has joined the service of the Respondent as Junior Sales Manager by Appointment Order dated 30.05.2008. After completion of probation he was confirmed in service w.e.f. 30.05.2009. Even though the petitioner joined service in the cadre of Junior Sales Manager, he worked under absolute control and supervision of his immediate superior. The petitioner was to identify insurance advisors (Agents) and to promote insurance business by procuring issuance policies for the Respondent Company. The post of Junior Sales Manager does not involve any supervisory or managerial capacity. In spite of the nomenclature of his designation as Junior Sales Manager the petitioner is a workman coming under the definition of Section-2(s) of the ID Act. The petitioner had no subordinate staff under him to control or command. The petitioner had no authority to issue or execute any order or to take any administrative decision. The petitioner has been discharging his duties to the best of his ability. On 12.05.2012 when the petitioner brought business for a sum of Rs. 20,000/- the First Respondent who is an immediate superior insisted to bring another policy for a similar sum within 24 hours. He sent message to the petitioner asking to send his resignation immediately. He prevented the petitioner from signing the attendance register. He even prevented the petitioner from entering the office premises. Thirty six days spreading over the months

of June, July, August, September and October 2012 have been marked as absent in the attendance register and salary for those days has not been disbursed to the petitioner. The petitioner was issued with review letters dated 07.07.2012, 14.09.2012, 24.10.2012 and 10.12.2012 stating that he has not achieved the target. By order dated 05.02.2013 the Third Respondent terminated the petitioner from service. The agreement of appointment of the petitioner does not speak about any target. The target has been unilaterally fixed by the Company and is not achievable by a person doing so many duties besides canvassing insurance policies. Termination was effected without conducting any enquiry. The Respondent did not issue notice or pay one month's salary in lieu of notice. Termination of the petitioner is purely the result of victimization. The termination would amount to retrenchment within the meaning of Section-2(oo) read with Section-25(f) of the ID Act. An order may be passed holding that termination of the petitioner is illegal and also directing the Respondents to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as follows:

The petition is not maintainable as the petitioner does not fall under the definition of workman as defined under the Industrial disputes Act. It is incorrect to state that the post of junior Sales Manager does not involve any managerial and supervisory capacity. It is incorrect to state that there is no subordinate staff under the petitioner. It is denied that the petitioner was discharging his duty in his best way and had brought maximum business to the Company. The Respondent Company is running its business in a competitive business environment and certain targets are required to be achieved so as to sustain its business. The petitioner was not able to achieve his targets and his performance was poor. Several opportunities were afforded to the petitioner to improve his performance and meet his targets. The company had sent at least three notices detailing the performance of the petitioner and each time giving opportunity to improve his performance. It is incorrect to state that the petitioner was not given notice of termination. It is incorrect to state that the First Respondent had insisted upon production of policy of Rs. 20,000/- within a span of 24 hours. So also it is incorrect to state that the First Respondent was sending messages to the petitioner and preventing him from signing Attendance Register. It is also incorrect to state that salary has not been given to the petitioner for 36 days. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the contentions in the Counter statement and reiterating his case in the Claim statement.

6. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W21.

7. The points for consideration are:

- (i) Whether the action of the management of the Respondents in terminating the service of the petitioner is justified?
- (ii) What, if any, is the relief to which the petitioner is entitled?

The Points

8. The petitioner who was appointed as Junior Sales Manager in Reliance Life Insurance Co. Ltd. in May 2008 has been terminated from service by order dated 05.02.2013. It is the case of the petitioner that his termination is without any justification. According to him, the Respondents have unilaterally fixed targets of business which could not be achieved at all. On the pretext of not improving his performance the Respondents have terminated him from service, the petitioner has stated.

9. The petitioner has filed proof Affidavit to substantiate his case. Ext.W1 to Ext.W21 were marked through him. The Respondents have not adduced any evidence either oral or documentary to contradict the case of the petitioner.

10. The Respondents have taken a contention in the Counter Statement that the petitioner is not a workman coming under the definition of Section-2(s) of the ID Act and therefore the petition is not even maintainable. Before considering the main issue this contention of the Respondents is to be considered. In the claim statement itself the petitioner has stated that even though his post carries the glorious name of Junior Sales Manager his post is only one coming under the definition of workman coming under the definition of workman in the ID Act. According to him, an attractive nomenclature was given only to attract the public and fetch business. He has stated in the claim statement that his work is not supervisory in nature and he is not controlling any subordinate staff or taking any decision or executing any order. The petitioner has reiterated his case in his affidavit also. Even though Respondents have contended in the counter statement that the petitioner is working in supervisory capacity, no attempt has been made to prove this by any oral or documentary evidence. The only justification given in the Counter Statement is that the very name of the post is Junior Sales Manager and it could be deciphered from this that the post is supervisory in nature. however, it is not stated in the Counter statement what is the supervisory nature of the work done by the petitioner.

11. It could be seen from the Claim Statement and also affidavit of the petitioner that his main job is to identify persons to be taken as agents for the Respondents Company. The petitioner has stated that he is not having any power to supervise these agents. The counsel for the petitioner has referred to the decision of the Apex Court in *S.K. VERMA VS. MAHESH CHANDRA AND ANOTHER* reported in AIR 1984 SC 1462 in support of his contention that the petitioner is only a workman. In the above case the Apex Court has held that a Development Officer in Life Insurance Corporation of India is a workman. A Development Officer in LIC of India seems to be a post equal to that of a Junior Sales Manager in the Respondent Company. The Apex Court has held in the above case that the principal duty of the Development Officer is to organize and develop business of the Corporation in the area allotted to him and for that purpose he is to recruit, active and reliable agents, to train them, to canvass new business and to render post sale services to policy holders. He is also to assist and inspire the agents and yet he has no authority to appoint agents or to take disciplinary action among them. The position of the petitioner herein also is the same. He is to identify persons who are to work as agents for the Respondent Company. Through them he is to canvass policies to the Company. At the same time he does not have any control over them. He is expected only to guide them. There is no case for the Respondents that the petitioner is having anybody who are the staff of the company under him. He has no power to execute any orders also. From all this it could be seen that in spite of the attractive name given for the post, the job of the petitioner is only that of a workman coming under the definition of Section-2(s) of the ID Act.

12. The petitioner was issued with a number of letters stating that he has failed to achieve the target and improve his performance. Ext.W2 is the first warning letter produced by the petitioner. In this a performances review is given and it is stated that the performance does not meet the expectations. The petitioner is asked to show immediate improvement and reach acceptable performance standards as given in the letter. One does not know on what basis the target was fixed, what was the target achieved by the petitioner earlier or whether the petitioner had been behind the others of his kind in achieving the target. There is a warning in the letter that failure to achieve the performance standard would result in termination from employment. Then there is Ext.W3 a communication from the First Respondent which states that the petitioner is not fit for the job and he is to resign from the post. Ex.W4 is another communication asking the petitioner to show immediate improvement. There is Ext.W7, Ext.W9 and also Ext.W10, three more such letters asking to improve the performance. In the meanwhile, the petitioner has written to the Deputy Zonal Manager, the Third Respondent complaining that he was not allowed to record his attendance and he was

not paid salary. Ext.W6 is another letter to this effect. Ext.W8 also complains about the failure to pay salary, apart from assuring that the petitioner will try to achieve his target. After this letter dated 22.09.2012, on 24.10.2012 the petitioner was terminated from service stating that he was unable to achieve his performance.

13. As pointed out on behalf of the petitioner, it is not known how the target was fixed. There is no evidence as to how much the petitioner is lagging behind in achieving the target when compared with others of his kind. It could be seen from the Appointment Order which is marked as Ext.W1 that canvassing bussiness is not the only job of the petitioner. He is expected to identify persons to work as agents and is to give necessary guidance to them. In spite of this, the petitioner was terminated from service stating on the ground that he has failed to achieve the target.

14. It has been pointed out by the counsel for the petitioner that the petitioner was not even served with a notice as contemplated under Section-25(f) of the ID Act before he was terminated from service. The Respondents have contended that several letters were issued to the petitioner before he was terminated from service. As pointed out by the counsel for the petitioner, all these are review letters asking the petitioner to improve his performance. No notice as contemplated under Section-25(f) of the Act is seen given. The petitioner was not given salary in lieu of notice or any compensation also. The Apex Court has held in the decision in *DELHI TRANSPORT CORPORATION VS. DTC MAZDOOR CONGRESS AND OTHERS* reported in 1991 SUPP (1) SCC 600 that the provision of the statute, regulation or the rule which empowers an employer to terminate the services of an employee whose service is of any indefinite period till he attains the age of superannuation, by serving a notice or pay in lieu thereof must be conformable to the mandate of Articles 14, 19(1)(g) and 21 of the Constitution. The termination of the petitioner from service is against this mandate of the Apex Court. The petitioner is entitled to be reinstated in service.

15. The Respondents are directed to reinstate the petitioner in service within a month of the award with 50% back wages, continuity of service and other attendant benefits. If back wages is not paid within a month of the award, the amount will carry interest @ 9% per annum.

The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/petitioner : WW1, Sri J.G John Jeba
Sobin

For the 2nd Party/Management : None

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ex.W1	30.05.2008	Appointment letter of the petitioner
Ex.W2	18.02.2012	Warning letter issued by the Respondent
Ex.W3	14.06.2012	SMS Correspondences
Ex.W4	07.07.2012	Warning letter issued by the Respondent
Ex.W5	07.09.2012	Representation from the petitioner to the Respondents
Ex.W6	13.09.2012	Reminder from the petitioner to the Respondents
Ex.W7	14.09.2012	Warning letter issued by the Respondent
Ex.W8	22.09.2012	Representation from the petitioner to the Respondents
Ex.W9	24.10.2012	Warning letter issued by the Respondent
Ex.W10	10.12.2012	Letter of the Management to the Respondent
Ex.W11	16.11.2012	Representation from the petitioner to the Respondent
Ex.W12	04.02.2013	Letter given by the petitioner to the Respondent for non-payment of salary
Ex.W13	05.02.2013	Termination notice of the petitioner
Ex.W14	11.02.2013	Requisition letter of the petitioner against termination
Ex.W15	20.08.2013	Dispute raised before the Assistant Labour Commissioner, madurai
Ex.W16	20.09.2013	Reply from the Management
Ex.W17	30.11.2013	Rejoinder reply of the Management
Ex.W18	-	Rejoinder of the petitioner
Ex.W19	-	Certificate of excellence of the petitioner issued by the Management
Ex.W20	-	Attendance Register from June to September, 2012
Ex.W21	-	Visiting Registers maintained by the Management

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 30 जून, 2015

का.आ. 1340.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रिज्म सीमेंट प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 27/02) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं० एल-29012/84/2001-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/02) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Prism Cement and their workman, which was received by the Central Government on 15/06/2015.

[No. L-29012/84/2001-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/27/02

Shri Pushpraj Singh,
S/o Shri Shildhaj Singh,
Gram Sijhata, Po Sijhata,
Distt. Satna (MP)

...Workman

Versus

President Mahakhari,
Prism cement
PO Bathiya,
Distt. Satna (MP)

...Management

AWARD

Passed on this 13th day of March, 2015

1. As per letter dated 24-1-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-29012/84/2001-IR(M). The dispute under reference relates to:

"Whether the action of the management of Prism Cement, Manakhari Distt. Satna (MP) in terminating the services of Shri Pushpraj Singh, S/o Shri Sheekdhawaj Singh instead of regularizing him after extracting work from him *w.e.f.* 6-11-95 to 30-3-99 is justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/5. Case of Ist party is that he was appointed on establishment of IInd Party from 9-10-95 for civil work. He was continuously working till 31-3-99. His services were illegally terminated. That Ist party was appointed as Civil Engineer, his services were terminated by IInd party No.2 vice President. Ist party further submits that establishment of IInd party is governed by standing orders. Other persons appointed with him Sanjay Tiwari, Naveen Shrivastava, Sanjay Singh, R.K. Tripathi, Mahendra Singh were regularized. He was designated and not regularized by IInd party amounts to unfair labour practice. It is further submitted that he was not granted experience certificate. He was told that he would have to wait for six months. He acquired status of regular employee after completion of six months service. He was continuously working more than 240 days during each of the year. His services were terminated without issuing notice. He was not paid retrenchment compensation. Seniority list of employees was not displayed by IInd party. Termination is illegal for violation of Section 25-F of ID Act. He further submits that first time he had come to know from letter dated 24-9-98 about his engagement as trainee. On such ground workman prays for his reinstatement with back wages.

3. IInd party filed Written Statement at Page 7/1 to 7/5 opposing claim of the workman. IInd party submits that on 6-11-95, workman was engaged on *ad hoc* basis for 11 months. Thereafter workman was engaged under training scheme T-4 from 1-10-96. The performance of Ist party during training period was not satisfactory. Workman was given opportunity as trainee. Workman had joined as trainee from 1-10-96. IInd party denies that workman was engaged as Civil Engineer. That standing orders are not applicable to establishment of IInd party. Services of Sanjay Tiwari, Naveen Shrivastava, Sanjay Singh, R.K. Tripathi, Mahendra Singh were regularized considering their performance and vacancy available. That performance of Ist party workman was not found satisfactory. There were no vacancies therefore workman could not be regularized.

4. IInd party denies that Ist party workman completed 240 days continuous service during any of the year. Violation of Section 25-F is denied. Workman is not entitled to retrenchment compensation as he was working as trainee under scheme T-4. All other adverse contentions of workman are denied. It is reiterated that as performance of workman during training period was not satisfactory and there was no vacancies he was not regularized after completion of training period. The claim of workman deserves to be rejected.

5. Ist party workman submitted rejoinder at Page 8/1 to 8/4 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|--------------------|
| (i) Whether the action of the management of Prism Cement, Manakhari Distt. Satna (MP) in terminating the services of Shri Pushpraj singh, S/o Shri Sheekdhawaj Singh instead of regularizing him after extracting work from him <i>w.e.f.</i> 6-11-95 to 30-3-99 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order |

REASONS

7. The workman is challenging termination of his service for violation of Section 25-F of ID Act. IInd party contends that workman was engaged as trainee under Scheme T-4. His performance during training period was not satisfactory. There was no vacancy therefore workman could not be regularized.

8. Workman filed affidavit of his evidence covering most of his contentions in statement of claim. Parties are not in dispute that workman was working on establishment of IInd party from 9-10-95 till termination for his service from 31-3-99. Regularization of service of Sanjay Tiwari, Naveen Shrivastava, Sanjay Singh, R.K. Tripathi, Mahendra Singh appointed along with workman regularized is also not in dispute. In his cross-examination workman denies that he was appointed as trainee for 11 months. He denies that his training period is extended for six months. He has not received any notice. Workman admits notice dated 24-9-98 as Exhibit M-1 was received by him. He also admits notice dated 29-3-99 M-2 was received. His services were terminated by said notice. No explanation was asked under said notice. Workman denies that his performance during period was not satisfactory was the reason for his termination.

9. Management filed affidavit of evidence of witness Ashutosh Mishra supporting contentions of IInd party in Written statement. That Ist party workman was engaged as trainee for 11 months. Initially he was paid stipend Rs.2000/- performance of workman in training period was not satisfactory. His training period was extended for six months. Management's witness in his cross-examination says no enquiry was conducted against workman basis of record he says that workman was appointed as trainee. Witness of management admits gate pass Exhibit W-1. He denies that name of section is not recorded in Exhibit W-1. He admits that other persons Sanjay Tiwari, Naveen Shrivastava, Sanjay Singh, R.K. Tripathi, Mahendra Singh

appointed with workman are regularized. He also admits if performance of workman during training period would have been satisfactory he could have been appointed. Management's witness denies that in Para-4 affidavit of evidence, it is wrongly written that workman was not appointed as regular employee.

10. The documentary evidence Exhibit M-1 about extension of training period of workman by six months does not bear signature of workman. The letter dated 1-10-96 about appointment of workman on training on revised stipend Rs.2000 per month refers to training scheme T-4. Any document about Scheme T-4 is not produced by IInd party. IInd party has also not produced by IInd party. IInd party has also not produced documents. Certified standing orders categorizing the employees engaged by IInd party. In absence of such documents, the appointment of Ist party workman as trainee could not be said legal. In Section 2(s) of Id Act workman includes an apprentice on completion of 240 days continuous service. Workman is entitled for protection of Section 25-F. the services of workman were not terminated following Section 25-F. of ID Act. He was not paid retrenchment compensation therefore termination of service of workman is illegal. Accordingly I record my finding in Point No.1.

11. Point No.2 termination of workman is found illegal for violation of Section 25-F of ID Act, question arises whether he is entitled for reinstatement with backwages. The workman was terminated in violation of Section 25-F ID Act. Workman was working for more than 3 years. Learned counsel for workman relies on ratio held in Case of Shriram Refrigeration Industries Vs. Hon'ble Addnl. Labour Court, Hyderabad and other reported in 2002(9) SCC 708. Their Lordship considered only 3years service left and workman was drawing pay Rs. 3045/- per month, Compensation Rs. 2,25,000 was allowed.

In another case relied between Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota- considering workman worked for 286 days, dispute raised after 6 years, compensation Rs. 1 lakh was allowed.

12. Considering working days of workman, in my considered view, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:—

- (1) The action of the management of the management of Prism Cement, Manakhari Distt. Satna (MP) in terminating the services of Shri Pushpraj Singh, S/o Shri Sheekdhvaj Singh instead of regularizing him after extracting work from him w.e.f 6-11-95 to 30-3-99 is not proper.
- (2) IInd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1341.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स लाईफ इंश्योरेंस कॉरपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 10/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं एल-17012/12/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2010) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the industrial dispute between the management of M/s. Life Insurance Corporation of India and their workman, received by the Central Government on 15/06/2015.

[No. L-17012/12/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Tuesday the 12th day of May, 2015/22nd Vaisakha, 1937)

ID 10/2010

Workman	: Shri K. K. Thomas Kannikakonil Nedunkandom, PO Idukki By Adv. Shri K. S. Madhusoodanan
Management	: The senior Divisional Manager LIC of India, Divisional Office Jeevan Prakash P. B. No. 609, Nagapadom Kottayam - 686 001 By Adv. Shri S. Easwaran

This case coming up for final hearing on 29.04.2015 and this Tribunal-cum-Labour Court on 12.05.2015 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour *vide* Order No-L-17012/12/2009-IR(M) dated 30.12.2009 referred the industrial dispute scheduled there under for Adjudication to this tribunal.

The dispute is:

" Whether the action of the management of Life Insurance Corporation of India in terminating the services *w.e.f.* 21.8.2008 of Shri K. K. Thomas claiming to be a part time sweeper at its Nedumkandam Branch is justified? To what relief the workman concerned is entitled?"

3. Initially after the acceptance of summons management alone entered appearance and hence an ex-parte award was passed on 19.03.2010 by my learned predecessor in officer after setting the workman ex-parte. The ex-parte award was set aside by the Hon'ble High Court *vide* judgement dated 05.01.2015 in WP(C) No. 24100 of 2011(J). Pursuant to the direction of the Hon'ble High Court in that order both parties entered appearance before this tribunal on 02.02.2015.

4. After appearance workman filed claim statement alleging that he had entered into the service of the management as a part-time sweeper on daily wage basis in its Nedumkandam branch in the year 1992. Later the payment of daily wages was changed to payment on weekly basis. He was paid Rs 56.25/- as daily wages while he was working in the Nedumkandam branch. Even after shifting the office to a new building having a sweeping area of 6000 square feet, which is three times than that of the area of the old building, he was paid the same wages. Hence he had submitted a representation dated 13.08.2007 to the management for enhancement of wages considering the increase of three times in the workload. The Branch manager *vide* letter dated 13.08.2007 recommended for enhancement of daily wages given to the workman. But he was continued to be paid the same wages. Even on 01.09.2007 he was paid only Rs. 82.50/- per day for sweeping for four days. Due to the demand made by him for enhancement of wages he was denied of the employment *w.e.f.* 28.08.2008 without any notice, notice pay or compensation. Hence he had raised the industrial dispute which resulted in this reference.

5. Management filed written statement contending that this tribunal has no jurisdiction to decide the dispute raised under the provisions of the Industrial Disputes Act in view of the amendment to the Life Insurance Corporation Act, 1956. By virtue of the amendment to Section 48(2) (cc) of the Life Insurance Corporation Act, the provisions of

the Industrial Disputes act and the Rules shall have no bearing notwithstanding anything contained therein. The provisions of the Industrial Disputes Act have no applicability in relation to the employment of persons under the Life Insurance Corporation. Besides that it is settled law that the daily wage employee cannot claim regularisation in service. There is no allegation in the claim statement as to violation of Section 25F of the Industrial Disputes act with regard to the termination of his service. The management has never engaged him continuously as a temporary/permanent employee for sweeping or for cleaning duties of the office and the guest house. There is no permanent or temporary part time sweeper in the office of the management. As and when needed some casual labourers were engaged and the workman had been engaged as one of the casual labourers in the year 2008-2009. He was engaged as a casual labourer and not as a part time sweeper. No appointment has been made by the management and hence the workman is not a regular or part time employee of the management. Since he was only a casual labour there was no specific rate of remuneration. Remuneration was paid depending upon the volume of work and time of work and the same was accepted by him without any objection. Since his engagement was not found to be satisfactory his service was discontinued. Under such circumstances no ground exists which necessitates the adjudication of the dispute.

6. Workman filed rejoinder denying the contentions in the written statement and reaffirming the allegations in the claim statement. It is further alleged that pursuant to the representation made by him on 13.08.2007 for enhancement of wages, he was illegally terminated from service violating the provision under Section 25F of the ID Act,

7. Later workman filed 1A 106/2015 seeking correction of the year of entry in service as 1994 instead of 1992 and the date of termination as 21.08.2008 instead of 28.08.2008 in the claim statement as well as in the replication. The 1A was allowed as per order dated 20.04.2015 and the amendment were carried out. No additional written statement was filed by the management even though opportunity was afforded for that purpose.

8. For the purpose of deciding this reference workman got himself examined as WW 1 and Exts. W1 to W50 were got marked. No evidence, either oral or documentary, was adduced from the side of the management. The arguments for both sides were heard.

9. The points for determination are:

- (i) Whether this Tribunal has got jurisdiction to entertain the ID in view of the amended provisions contained in the Life Insurance Corporation act, 1956?
- (ii) Whether the workman in the ID comes within the purview of the definition of 'workman' under the Industrial Disputes Act?

(iii) Whether he was illegally terminated from service in violation of Section 25F of the Industrial Disputes Act?

(iv) To what relief the workman is entitled to?

10. Point No. (i):—Challenge is made with regard to the jurisdiction of this Tribunal to entertain the ID by making the plea in the written statement by resorting to the provision contained in Section 48(2)(cc) of the Life Insurance Corporation Act, 1956 and by making reference to the decision reported in LIC of India Vs. Ushakumari 2014 (4) KLJ 884. At the time of argument learned counsel for the management has argued that the rules framed by the Central Government, in exercise of the powers under Section 48(1) of the said Act, has overriding effect over the provisions of the Industrial Disputes Act, 1947 in view of sub section (2C) of Section 48 incorporated by way of amendment in the year 1981 in the Life Insurance Corporation Act. In support of his argument reliance was place by him on the above said decision where it was held that in view of Section 48(2) of the LIC Act, Life Insurance Corporation of India Staff Regulations, 1960 would override the provisions of the ID Act in so far as the conflicting provisions relating to the terms and conditions of employment are concerned.

11. The applicability of the provisions of the Industrial Disputes Act is excluded only in the case of workman whose conditions of service are governed by the regulations or rules made by the Central Government under Section 48(1) of the LIC Act. So it is necessarily to be considered whether the workman in this case is governed by any such regulation or rules.

12. There is not much dispute as to the fact that he was engaged as a casual labour by the management. He has no case that he was appointed as a permanent/temporary staff. In the claim statement as well as in the replication it is stated that he was engaged as a part time sweeper. He would state during his cross examination when examined as WW1 that no appointment order was issued to him from the management for his engagement. There is no evidence in this case to prove that he was a permanent or temporary staff of the management or that he was working on contract basis in any post in the management. There cannot be any post of part time sweeper in the management and it is evident from Rule 5 and Schedule II of the Life Insurance Corporation of India (Staff) Regulations, 1960. From the copies of the wage receipts produced by the workman and got marked as Exts. W 5 to W 50 it can be seen that he was not only attending the work of part time sweeper but also other works and he was receiving daily wages weekly for 4 to 5 days. He would also admit during cross examination that he was engaged on daily wage basis by making payment in every week. Hence it can be held that he was engaged as a casual labour on daily wage basis by the management.

13. Learned counsel for the management was not able to point out any rule or any regulation which deals with the conditions of service of casual labour. Life Insurance Corporation of India (employment of temporary staff) Instructions, 1993 dated 28.06.1993 makes it clear that employment of staff in class III and class IV on a temporary basis are to be made in accordance with the Instructions and those instructions shall not apply to the employment of casual employees. Management was not able to satisfy that there is any rule or regulation made under Section 48(i) governing the conditions of service of casual employees. The engagement as a casual labour cannot be said to be based on a rule or regulation coming within the purview of Section 48(2C) of the LIC Act. Towards the far end of the argument learned counsel for the management was also fair enough to concede that the engagement of casual labour does not come within the purview of the said provision of the LIC Act excluding the applicability of the provisions of the Industrial Disputes Act. Hence it can be held that this tribunal has jurisdiction to entertain this industrial dispute as it relates to the engagement of a casual labour.

14. Point No. (ii):—While dealing with Point No. (i) it has been found that the workman was engaged as a casual labour by the management. Management would not dispute his engagement as a casual labour. A casual labour will also come within the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act. Hence it is found that the workman comes within the purview of definition of 'workman' as per the provision contained in the Industrial Disputes Act.

15. Point No. (iii):—There is no case for the management that the workman was terminated from service by complying with the procedure provided under Section 25F of the Industrial Disputes Act. Workman has got a specific case in his pleadings that he was illegally terminated in violation of Section 25F of the ID Act.

16. First of all it is to be considered whether the workman was in continuous service for a period of one year. There is no evidence in this case to prove that there was continuous engagement for a period of one year. Ext. W3 will go to show that he was engaged as a part time sweeper for a period of seven years. It is not stated anywhere in Ext. W3 that he was in continuous service during that period. As there is no reliable evidence to prove that he was in service for a period of one year it is to be considered whether he was engaged for 240 days in the year prior to the date of his termination. The burden to prove the same is on the workman. Whether it was duly discharged is to be considered in view of the evidence adduced in this case.

17. Initially it was pleaded in the claim statement as well as in the replication that the workman joined the service of the management in the year 1992 and was denied of the employment w.e.f 28.08.2008. Subsequently it was amended

so as to change the year of joining as 1994 and the date of termination as 21.08.2008.

18. The proof affidavit of the workman who was examined as WW1 still remains with the averment that he had entered into the service as a part time sweeper of the management in 1992. Whatever it be the date of termination can be treated as 21.08.2008. There is absolutely no reliable evidence in this case to prove that he had worked for 240 days in the year preceding the date of termination. There is only the interested testimony of WW1 and Exts. W46 to W50 to prove his engagement during that one year period. Exts. W 46 to W50 can be relied on to prove that he was engaged as a casual labour for a few days. It is not sufficient to prove that there was engagement for 240 days within the period of one year prior to the date of termination.

19. In the decision reported in *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh* (2005) 8 SCC 481 it was held that onus to prove the requirement of 240 days' continuous service lies on the workman and it is for the workman to adduce evidence apart from examining himself or filing an affidavit to prove it. It was further held that such evidence may be in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days.

20. Here in this case, there is no evidence except the interested testimony of WW1 to prove that he was engaged from 1994 as a part time sweeper by the management. Exts. W7 to W 50 relate only to the period from 2001 onwards. During the cross examination of WW1 it was stated by him that he was marking attendance in the attendance register. No request was made by the workman for the production of the same by the management. Ext. W3 will also go to show that his engagement was for a period of 7 years before 13.08.2007. There is no documentary evidence to prove there was continuous service of 240 days. It was already pointed out that there was no post of part time sweeper in the management. The workman was engaged intermittently as a casual labour. There is no reliable evidence to prove the continuous engagement of 240 days. The workman has failed to discharge the burden cast upon him to prove continuous engagement for 240 days in the year prior to the date of termination. Hence his service could be terminated without complying with the procedure provided under Section 25F of the Industrial Disputes Act. Hence the action of the management in terminating the service of the workman w.e.f 21.08.2008 is justified.

21. Point No, (iv):—In the result an award is passed holding that the termination of the workman from the services of the management w.e.f 21.08.2008 is justified and hence the workman is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dr. SREE VALLABHAN, Presiding Officer

APPENDIX

Witness for the workman

WW1 10.04.2015 Shri K K Thomas

Witness for the management NIL

Exhibits for the workman

- W1 - Representation dated 12.12.2005 submitted by the workman to the Officer, STM, LIC Office, Kottayam Division.
- W2 - Copy of the representation dated 13.08.2007 submitted by the workman to the Sr. Divisional Manager, Divisional Office, LIC of India, Kottayam.
- W3 - Copy of the letter dated 13.08.2007 addressed to the Sr. Divisional Manager, LIC of India, Divisional Office, Kottayam-1 by the Branch Manager, LIC of India, Branch Office, Nedumkandam.
- W4 - Copy of the complaint dated 06.09.2008 addressed to the Labour Officer, Nedumkandam by the workman.
- W5 - Letter No. MO184/08/LDis dated 17.09. 2008 addressed to the workman by the Deputy Labour Officer, Nedumkandam.
- W6 - Copy of the failure of conciliation report vide letter No. 7(06/2009/ALC-TVM dated 03.9.2009 addressed to the Secretary to the Government of India, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi by the Assistant Labour Commissioner (Central), Trivandrum.
- W7 - Payment Voucher dated 27.01.2001 issued by the LIC of India to the workman.
- W8 - Copy of the payment voucher dated 07.02.2004 issued by the LIC of the India, Kottayam to the workman
- W9 - Payment Voucher dated 08.05.2004 issued by the LIC of India, Kottayam Division to the workman
- W10 - Copy of the payment voucher dated 26.08.2004 issued by the LIC of India, Kottayam to the workman
- W11 - Copy of the account payee cheque bearing No. 224276 dated 11.12.2004 for 437/- and copy of the payment voucher dated 26.08.2004 issued by the LIC of India, Kottayam to the workman.
- W12 - Copy of the payment voucher dated 07.05.2005 issued by the LIC of India, Kottayam to the workman

W13 -	Copy of the payment voucher dated 09.12.2005 issued by the LIC of India, Kottayam to the workman	W29 -	Copy of the payment voucher dated 16.12.2006 issued by the LIC of India, Kottayam to the workman
W14 -	Copy of the payment voucher dated 17.12.2005 issued by the LIC of India, Kottayam to the workman	W30 -	Copy of the payment voucher dated 23.12.2006 issued by the LIC of India, Kottayam to the workman
W15 -	Copy of the payment voucher dated 31.12.2005 issued by the LIC of India, Kottayam to the workman	W31 -	Copy of the payment voucher dated 01.01.2007 issued by the LIC of India, Kottayam to the workman
W16 -	Copy of the payment voucher dated 21.01.2006 issued by the LIC of India, Kottayam to the workman	W32 -	Copy of the payment voucher dated 08.01.2007 issued by the LIC of India, Kottayam to the workman
W17 -	Copy of the payment voucher dated 28.01.2006 issued by the LIC of India, Kottayam to the workman	W33 -	Copy of the payment voucher dated 15.01.2007 issued by the LIC of India, Kottayam to the workman
W18 -	Copy of the payment voucher dated 04.02.2006 issued by the LIC of India, Kottayam to the workman	W34 -	Copy of the payment voucher dated 20.01.2007 issued by the LIC of India, Kottayam to the workman
W19 -	Copy of the payment voucher dated 18.02.2006 issued by the LIC of India, Kottayam to the workman	W35 -	Copy of the payment voucher dated 27.01.2007 issued by the LIC of India, Kottayam to the workman
W20 -	Copy of the payment voucher dated 13.05.2006 issued by the LIC of India, Kottayam to the workman	W36 -	Copy of the payment voucher dated 03.02.2007 issued by the LIC of India, Kottayam to the workman
W21 -	Copy of the payment voucher dated 12.08.2006 issued by the LIC of India, Kottayam to the workman	W37 -	Copy of the payment voucher dated 10.02.2007 issued by the LIC of India, Kottayam to the workman
W22 -	Copy of the payment voucher dated 09.09.2006 issued by the LIC of India, Kottayam to the workman	W38 -	Copy of the payment voucher dated 17.02.2007 issued by the LIC of India, Kottayam to the workman
W23 -	Copy of the payment voucher dated 30.09.2006 issued by the LIC of India, Kottayam to the workman	W39 -	Copy of the payment voucher dated 24.02.2007 issued by the LIC of India, Kottayam to the workman
W24 -	Copy of the payment voucher dated 07.10.2006 issued by the LIC of India, Kottayam to the workman	W40 -	Copy of the payment voucher dated 10.03.2007 issued by the LIC of India, Kottayam to the workman
W25 -	Copy of the payment voucher dated 14.10.2006 issued by the LIC of India, Kottayam to the workman	W41 -	Copy of the payment voucher dated 28.04.2007 issued by the LIC of India, Kottayam to the workman
W26 -	Copy of the payment voucher dated 20.10.2006 issued by the LIC of India, Kottayam to the workman	W42 -	Copy of the payment voucher dated 12.05.2007 issued by the LIC of India, Kottayam to the workman
W27 -	Copy of the payment voucher dated 28.10.2006 issued by the LIC of India, Kottayam to the workman	W43 -	Copy of the payment voucher dated 19.05.2007 issued by the LIC of India, Kottayam to the workman
W28 -	Copy of the payment voucher dated 04.11.2006 issued by the LIC of India, Kottayam to the workman	W44 -	Copy of the payment voucher dated 09.06.2007 issued by the LIC of India, Kottayam to the workman

- W45 - Copy of the payment voucher dated 16.06.2007 issued by the LIC of India, Kottayam to the workman
- W46 - Copy of the payment voucher dated 29.08.2007 issued by the LIC of India, Kottayam to the workman
- W47 - Copy of the payment voucher dated 01.09.2007 issued by the LIC of India, Kottayam to the workman
- W48 - Copy of the payment voucher dated 27.10.2007 issued by the LIC of India, Kottayam to the workman
- W49 - Copy of the payment voucher dated 15.12.2007 issued by the LIC of India, Kottayam to the workman
- W50 - Copy of the payment voucher dated 22.03.2008 issued by the LIC of India, Kottayam to the workman

Exhibits for the management — NIL

नई दिल्ली, 30 जून, 2015

का.आ. 1342.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आदित्या सीमेंट प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 152/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं एल-29012/40/2000-आई आर (एम)]

जोहन तापनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 152/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Aditya Cement and their workman, which was received by the Central Government on 15/06/2015.

[No. L-29012/40/2000-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/152/2000

Shri Giriraj S/o Shri Kanhiyalal Ojha,
VPO Ghatiyani Mohalla,
Hamirgarh,
Bhilwara

...Workman

Versus

Vice President,
M/s Aditya Cement,
Shambhupura,
Chhittorgarh

...Management

AWARD

Passed on this 29th day of April 2015

1. As per letter dated 18-8-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-29012/40/2000/IR(M). The dispute under reference relates to:

"Whether the termination of services of Shri Giriraj S/o Kanhiyalal Ojha by the management of M/s Aditya Cement, Shambhupura on 18-6-99 is legal and justified? If not, to what relief disputant is entitled and from which date?"

2. Ist Party workman is challenging termination of his services in the dispute under reference. Even after issuing notices, the workman did not participate in the proceeding, no statement of claim is filed. Ist party is proceeded exparte on 19-9-2014.

3. IInd Party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:—

"Reference is disposed off as No Dispute Award."

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1343.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सेन्ट्रल वेयरहाउसिंग कॉरपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय 1, मुंबई के पंचाट (संदर्भ संख्या 31/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं० एल-42011/3/2014-आई आर (एम)]

जोहन तापनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2014) of the Central Government Industrial Tribunal/Labour Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Central Warehousing Corporation and their workman, which was received by the Central Government on 15/06/2015.

[No. L-42011/3/2014-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present

JUSTICE S.P. MEHROTRA,
Presiding Officer

REFERENCE NO. CGIT-1/31 OF 2014

Parties:

Employers in relation to the management of
Central Warehousing Corporation

And

Their workman

Appearances:

For the first party/Management : Mr. V.S. Kadam,
Superintendent.

For the second party/Union : Mr. K.D. Gharat,
General Secretary.

State : Maharashtra

Mumbai, the 27th day of April, 2015

AWARD

1. The present Reference has been made by the Central Government by its order dated 9.10.2014 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said order are as under:

"Whether the officer Order dt. 11.9.2012 in respect of the transfers of 12 employees from Navi Mumbai

Region to Mumbai Region issued by the Regional Manager, Central Warehousing Corporation, Navi Mumbai stated to be in compliance with the Office circular dt. 4.9.2012 issued by the Corporate Office of the management at New Delhi is legal, just and proper? If not, what relief the workman concerned are entitled to?"

2. By the Order dated 10.11.2014, Notices were directed to be issued to the Parties.

3. Pursuant to the Notices issued, the Parties put in appearance in the present matter.

4. By the Order dated 16.2.2015, and thereafter, by the Order dated 13.4.2015, time was granted to the Union in question, namely, Kendriya Bhandar Nigam Sthanik Prkalpagrastha Kamgar Sanghthana for filing Statement of Claim.

5. Pursuant to the Order dated 13.4.2015, the case is put up today.

6. Shri V.S. Kadam, Superintendent, Central Warehousing Corporation, Navi Mumbai is present on behalf of the Central Warehousing Corporation.

7. Mr. K.D. Gharat, General Secretary of the Union in question, namely, Kendriya Bhandar Nigam Sthanik Prkalpagrastha Kamgar Sanghatana is present.

Mr. K.D. Gharat, General Secretary of the Union in question, namely, Kendriya Bhandar Nigam Sthanik Prkalpagrastha Kamgar Sanghatana states that the Union in question does not want to file any Statement of Claim as the cause forming the subject-matter of the aforesaid Reference no longer remains. An application in this regard has been filed today by Shri K.D. Gharat, General Secretary of the Union in question, namely, Kendriya Bhandar Nigam Sthanik Prkalpagrastha Kamgar Sanghatana.

8. It is, *inter-alia*, stated in the said Application that no cause remains with the Union in question to pursue the aforesaid Reference further and, therefore, the Reference may be disposed of as per the admissibility.

9. Shri V.S. Kadam, has filed today an Authority Letter in his issued by Shri A.K. Dubey, Regional Manager, Central Warehousing Corporation, Regional Office, Navi Mumbai. It is, *inter-alia*, stated in the Authority Letter that Shri V.S. Kadam is authorized to make statement on behalf of Central Warehousing Corporation that the Management of Central Warehousing Corporation has no objection if the Union in question desires to withdraw their case willingly.

10. Shri V.S. Kadam, Superintendent, Central Warehousing Corporation, Navi Mumbai states that the Management of Central Warehousing has not objection to

the prayer made on behalf of the Union in question, namely, Kendriya Bhandar Nigam Sthanik Prakalpagraस्था Kamgar Sanghatana, as mentioned above, being granted.

11. In view of the above, it is evident that the Industrial Dispute forming the subject-matter of the present Reference no longer survives.

12. Reference is, answered by stating that the Industrial Dispute forming the subject-matter of the Reference no longer survives.

13. Award is passed accordingly.

JUSTICE S.P. MEHROTRA, Presiding Officer

नई दिल्ली, 30 जून, 2015

का.आ. 1344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत गोल्ड माईन्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 81, 105, 106/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2015 को प्राप्त हुआ था।

[सं एल-43012/23/95-आई आर (एम),

सं एल-43012/20/95-आई आर (एम),

सं एल-43012/19/95-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th June, 2015

S.O. 1344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 81, 105, 106/1996) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Bharat Gold Mines and their workman, which was received by the Central Government on 15/06/2015.

[No. L-43012/23/95-IR(M),

No. L-43012/20/95-IR(M),

No. L-43012/19/95-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/81/96

Shri Ramesh Ganpat Bawankude,
R/o Nagardhan,
Tehsil, Ramtek,
Distt., Nagpur

...Workman

Versus

Manager,
Bharat Gold Mines Ltd.,
Belgongri Mines,
Tehsil, Ramtek, Nagpur

...Management

NO. CGIT/LC/R/105/96

Shri Nand Kumar Govinda Bavankude,
R/o Nagardhan,
Tehsil, Ramtek,
Distt., Nagpur

...Workman

Versus

Manager,
Bharat Gold Mines Ltd.,
Belgongri Mines,
Tehsil, Ramtek, Nagpur

...Management

NO. CGIT/LC/R/106/96

Shri Anna Tarachand Fulzele,
R/o Nagardhan,
Tehsil, Ramtek,
Distt., Nagpur

...Workman

Versus

Manager,
Bharat Gold Mines Ltd.,
Belgongri Mines,
Tehsil Ramtek, Nagpur

...Management

AWARD

Passed on this 19th day of March, 2015

1. (a) As per letter dated 18-3-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-43012/23/95-IR (Misc.). The dispute under reference relates to:

"Whether the action of the management of Bharat Gold Mines Limited, PO Oorgaam, KGF 563120 in terminating the services of Shri Ramesh Ganpatrao, a semi skilled time rated worker *w.e.f.* 16-4-95 as claimed by him is legal, proper and just? If not, what relief the workman is entitled to?"

(b) As per letter dated 27-3-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-43012/20/95-IR (Misc.). The dispute under reference to:

"Whether the action of the management of Bharat Gold Mines Limited, PO Oorgaam, KGF 563120 in terminating the services of Shri Nand Kumar Govinda, a semi skilled time rated worker *w.e.f.* 16-4-95 as claimed by him is legal, proper and just? If not, what relief the workman is entitled to?"

(c) As per letter dated 27-3-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-43012/19/95-IR (Misc.). The dispute under reference to:

"Whether the action of the management of Bharat Gold Mines Limited, PO Oorgaum, KGF 563120 in terminating the services of Shri Anna Tarachand, a semi skilled time rated worker *w.e.f.* 16-4-95 as claimed by him is legal, proper and just? If not, what relief the workman is entitled to?"

2. All those references are identical in nature, it is convenient to decide all those references by common award.

3. After receiving reference, notices were issued to the parties. IInd party worker submitted statement of claim at Page 2/1 to 2/3 in all the references. Case of IInd party workman is that they were working with Ist party management from 19-11-92 as labour. They were respectively paid wages Rs. 40/- per day. Ist party management was issuing employment card. The Ist party management used to give employment to IInd party for two months. Artificial gap of 4-5 days was given. Ist party had taken back original appointment orders. That Ist party had not extended benefits of permanent employee to them. They were also not allowed benefit of Provident Fund, Bonus, Wages, Weekly rest, Medical facilities. All the workmen approached ALC, Nagpur through Union. The dispute was raised. That they were continuously working for more than 240 days during each of the year. Their services were terminated without notice from 15-4-95. No reason was assigned for termination of their services. Ist party not paid retrenchment compensation. They were not served with one month's notice, neither paid one months pay before terminating their services. Provision of ID Act were not applied by management. Therefore terminating is illegal. They claim reinstatement with back wages.

4. IInd party No. 2 MOIL filed identical Written Statement at Page 6/1 to 6/6 in all matters opposing claim of workman. IInd party No. 2 submits that IInd party No. 1 was engaged as contractor for completing the work of construction of shaft Mines of Ist party No. 1. IInd party employees were not engaged by it. There is no employer employee relationship. Industrial dispute is raised claiming regular employment of Ist party No. 2. That contractor had employed IInd party workman for specific period. After completion of period of appointment, their services were automatically terminated. Their discontinuation from work is covered under Section 2 (oo)(bb) of ID Act. It does not amount to retrenchment. The compliance of Section 25-F of ID Act was not necessary. It was not necessary to pay compensation or issued notice. Relying ratio held in various cases, Ist party No. 2 prayed for rejection of claim.

5. Ist party No. 2 Bharat Gold Mines submitted Written Statement at Page 7/1 to 7/6 pleading that it was engaged for carrying construction work of shafts. Workmen were engaged for specific period. The contract was awarded to Ist party No. 1 in February, 1992 for construction of underground shaft in Mine of MOIL. The contract work was completed in April, 1995. After completion of contract, the employees engaged by contractor BGML. The provisions of Contract Labour (R&A) Act does not apply. There was no complaint about engagement of the workers till completion of contract. The completion certificate was issued by Ist party No. 2 MOIL. The contract work was of temporary nature. The employment was continued till completion of work renewing time to time. That contractor had followed statutory provisions. IInd party workman was not employed following the recruitment process. It is denied that IInd party workman was given artificial breaks of 4-5 days. The engagement was casual for specific period. It is denied that workman had completed 240 days continuous service. There was no question of issuing notice of payment of one months salary in lieu of notice in violation of provisions of ID Act is denied.

6. Ist party No. 2 MOIL filed rejoinder at Page 6/7 to 6/10 reiterating its contentions in Written Statement.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---|
| (i) Whether the action of the management of Bharat Gold Mines Limited, PO Oorgaum, KGF 563120 in terminating the services of Shri Ramesh Ganpatrao in R/81/96, Shri Nand Kumar Govinda in R/105/96 & Shri Anna Tarachand in R/106/96 a semi skilled time rated worker <i>w.e.f.</i> 16-4-95 as claimed by them is legal, proper and just? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workmen are not entitled to any relief. |

REASONS

8. IInd party workman are challenging termination of their service for violation of Section 25 of ID Act. That their services were terminated without notice, retrenchment compensation was not paid to them. However the IInd party workman failed to participate in reference proceeding. He failed to adduce evidence. Their evidence was closed on 10-2-2010 in all the matters.

9. Management filed affidavit of evidence of witness Nitin Pagnis & J. Issac supporting contentions of IInd

party management that the work of construction was allotted to BGML in February, 1992. Work was completed. Completion certificate was issued by Shri P.P. Chakravorty Dy. Chief Engineer of MOIL. Workmen were engaged for specific period. The termination of service of workman was a result of non-renewal of contract of employment covered under Section 2(oo)(bb) of ID Act. Ist party No.1 BGML executed the work and completed in 1995. Shri Nitin Pagnis has also corroborated above said evidence. Both witnesses of management were not cross-examined. Their evidence remained unchallenged. I do not find reason to discard their evidence.

10. Affidavit of evidence of Shri N. Rangaswamy is also filed supporting contentions of management. His evidence also remained unchallenged as workman remained absent and failed to cross-examine. Identical documents are produced in all the matters. Agreement Exhibit M-1 executed between Ist party No.1 & 2 for execution of the work. Exhibit M-2 is completion Certificate issued by Dy. Chief Engineer of MOIL. It finds reference that the contract work of shaft repairig was given to BGML. Said work was completed during 16-10-92 to 15-4-95. Exhibit M-3 is Form No. 5 given by Principal Employer. M-4 is order declaring Ist party No.1 as Sick Industry. As IInd party workmen have not participated in reference proceeding, witnesses of management are not cross-examined, their evidence remained unchallenged. There is no reason to disbelieve evidence of management's witnesses.

11. Learned counsel for Ist party management No.2 Shri A.K. Shashi relies on ratio held in:

Case of M.D. Karnataka Handloom Dev. Corp. Ltd. *versus* M.L. Raval reported in AIR-2007-SC-631. Their Lordship held respondent engaged on contract basis assigned to train weavers on time specific short term scheme sponsored by State Handloom Dev. Corpn. paid stipend is not a worker soon after expiry of specific period, respondent's service was discontinued is not retrenchment as defined under Section 2(oo) of ID Act is not necessary.

Reliance is also placed in ratio held in case of Steel Authority of India Ltd. and another *versus* State of West Bengal and others reported in 2009-I-LLJ-241(SC). Their Lordship dealing with Section 7-A and 10 of Contract Labour (R&A) Act. Their Lordship held the dispute raised by contractors Union referred by State Government. No pleading by workmen that contract was sham and bogus and reference was quashed.

Ratio has no bearing to the controversy involved in present matter. As the workman failed to adduce evidence in support of their claim, I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed as under:—

- (1) The action of the management of Bharat Gold Mines Limited, PO Oorgaum, KGF 563120 in terminating the services of Shri Ramesh Ganpatrao in R/81/96, Shri Nand Kumar Govinda in R.105/96 & Shri Anna Tarachand in R/106/96 a semi skilled time rated worker *w.e.f.* 16-4-95 is proper and legal.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1345.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं० सीजीआईटी/एलसी/आर/47/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं० एल-40012/22/1996-आईआर(डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/47/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications and their workmen, which was received by the Central Government on 30/06/2015.

[No. L-40012/22/1996-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/47/98

Shri Dharam Singh,
S/o Shri Harnam Singh,
Ex-Motor Driver,
R/o Qr. No. 1105/2,
Construction Colony,
SE. Railway, Bilaspur

.....Workman

Versus

Sub Divisional Engineer,
Telecom (Railway Electrification Project),
Govt. of India,
Deptt. of Telecommunications,

Office palas No. 34, Raj Kishore Nagar,
Bilaspur

.....Management

AWARD

Passed on this 29th day of May, 2015

1. As per letter dated 23-2-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-40012/22/96-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Sub Divisional Engineer, Telecom, Railway Electrification Project, Bilaspur in terminating the services of Shri Dharam Singh S/o Harnam Singh, Ex-Motor Driver *w.e.f.* August, 1994 is justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/2. Case of workman is that he was employed as Motor Driver from Sept., 93 to December, 94 in office of Asstt. Engineer of IInd party. He was continuously working more than 240 days. His services were abruptly terminated by management without order in writing. The termination of his services amounts to retrenchment. He was not paid retrenchment compensation before terminating his services. Prior permission of Government was not obtained by the management. Termination of his service is in violation of Section 25-F,H,N of ID Act. On such ground, workman prays for his reinstatement with back wages.

3. IInd party was proceeded *ex parte* on 4.7.07. As per order sheet dated 31.7.07, it appears that said order was wrongly passed, the order was called back, case proceeded *ex parte* against management. As per order dated 25.4.2013, *ex parte* order against management was called back imposing cost of Rs. 500 However IInd party management failed to file Written Statement.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--|
| (i) Whether the action of the management of Sub Divisional Engineer, Telecom, Railway Electrification Project, Bilaspur in terminating the services of Shri Dharam Singh S/o Harnam Singh, Ex-Motor Driver <i>w.e.f.</i> August, 1994 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F,H,N of ID Act. That he was not paid retrenchment compensation. Permission of Government was not obtained before termination of his service. *Ex parte* order was set aside against management, case was fixed for evidence of workman. Workman failed to participate in reference proceeding despite of repeated notices sent to him. Despite the case was adjourned for evidence of workman to 14.10.14, 5.12.2014, 18.2.2015 workman failed to adduce evidence in support of his claim. Management also failed to adduce evidence. It is clear that the parties failed to participate in reference proceeding therefore the dispute under reference could not be adjudicated on merit. Action of the management is not proved to be illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:—

- (1) The action of the management of Sub Divisional Engineer, Telecom, Railway Electrification Project, Bilaspur in terminating the services of Shri Dharam Singh S/o Harnam Singh, Ex-Motor Driver *w.e.f.* August, 1994 is not proved illegal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1346.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं० सीजीआईटी/एलसी/आर/14/02) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं० एल-40012/279/2001-आईआर(डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/14/02), of the Central Government Industrial Tribunal Cum - Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications and their workmen, which was received by the Central Government on 30.06.2015.

[No. L-40012/279/2001-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-ABOUR COURT,
JABALPUR**

No. CGIT/LC/R/14/2002

Shri Kalu Khan,
S/o Shri Raju Khan,
Vill Bablya
PO Gulavata,
Thana Sarangpur,
Rajgarh

....Workman

Versus

Telecom District Engineer,
O/O The TDE, Rajgarh,
At Biaora,
Rajgarh.

....Management

AWARD

Passed on this 17th day of June, 2015

1. As per letter dated 3.1.02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-40012/279/2001-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Telecom District Engineer, Rajgarh in terminating the services of Shri Kalu Khan S/o Shri Raju Khan *w.e.f.* Jan. 2000 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/5. Case of workman is that he was appointed on muster roll as casual labour with IInd party from March, 1990. The services on muster roll were discontinued in 1992. He continuously worked during January, 1992 to December 1992. He was paid wages under voucher. He was working with lineman Hari Singh, Mule Singh and others at Pandanla, Sarangpur, Sanpudi exchanges. Workman also refers to the judgment by Hon'ble Apex court for framing scheme for regularization of casual labours. The scheme was made applicable from 31.3.85. Cut off date was extended in various judgments. Workman reiterates that he worked more than 240 days during each of the year. His services are terminated without paying retrenchment compensation, in violation of Section 25-F of ID Act. Incidentally workman has pleaded that he was paid Rs. 12 per month. Oral termination of services is illegal.

3. The application for production of document was filed by workman. IInd party has filed reply as well as parawise reply. IInd party contents that muster roll is totally stopped from 1985. Workman was engaged for petty work in the

department. Workman was neither appointed nor retrenched by the department. That as per Rule 69 in General Appendix 5, muster rolls are preserved for 5 years. The record beyond 5 years is destroyed.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|--|
| (i) Whether the action of the management of Telecom District Engineer, Rajgarh in terminating the services of Shri Kalu Khan S/o Shri Raju Khan <i>w.e.f.</i> Jan 2000 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

5. Workman is challenging termination of his services for violation of Section 25-F of ID Act. His claim is opposed by management denying his appointment.

6. Workman filed affidavit of his evidence supporting his contentions that he was appointed on muster roll by IInd party March, 90 to March, 92 as casual labour. He was working with different lineman. His wages were paid by voucher. Workman remained absent for his cross-examination therefore his evidence could not be relief. Management failed to adduce evidence. Evidence of management is closed on 7.1.2015. As the workman failed to appear for his cross-examination, his evidence cannot be considered. The claim of workman cannot be established. For above reasons, I record my finding in Point No. 1 in Affirmative.

7. In the result award is passed as under:—

- (1) The action of the management of Telecom District Engineer, Rajgarh in terminating the services of Shri Kalu Khan S/o Shri Raju Khan *w.e.f.* Jan., 2000 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer
नई दिल्ली, 1 जुलाई, 2015

का.आ. 1347.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं/सीजीआईटी/एलसी/आर/69/96) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं एल-40012/239/1994-आईआर(डीयू)]
पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/69/96) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications and their workmen, which was received by the Central Government on 30.06.2015.

[No. L-40012/239/1994-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/69/96

Shri Ramesh Kumar Avasare,
S/o Buddh Ram C/o Bhim Chandra Patel,
R/o Gangu Sahu, Taj Chowk,
Telibandh, Raipur

Workman

Versus

The Director,
Telecom Project (West MP),
T.T. Nagar, Bhopal.

Management

AWARD

Passed on this 15th day of June 2015

1. As per letter dated 26.2.96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/239/94-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Coaxial Cable Project D/o Telecommunication through Divl. Engineer, Coaxial Cable Project, Shankarnagar, Raipur MP in terminating the services of Shri Ramesh Kumar Avasare is lawful and justified? If not, to what relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/3. The case of workman is that he was engaged by IInd party No. 2, 3 on 16.1.1987 in co-axial Project, Shankar Nagar, Raipur. That he received education upto intermediate. The workman was engaged in carrying work of receiving telephone calls, safety of spare parts etc. from February 87 to 31.12.90. He was regularly paid monthly pay. He worked with devotion from 1.1.1991. Workman was disengaged in 1996. Workman was called to work at Microwave station, Bhatapara. Identity Card was not issued to him. He was paid wages obtaining receipts signed by him. Workman was disengaged on the ground that work in telephone

department were not available. The employees working in coaxial department were transferred to other departments of the telephone and continued in service. From January 97, workman was discontinued without notice, he was not paid retrenchment compensation. Workman was given assurances if permission was granted, he would be engaged back. Workman submits that he is the only earning person in the family, his family consists of mother, father, wife and two children. He is unemployed. On such ground, he prays that IInd party be directed to engage him as watchman, phone mechanic etc.

3. IInd party filed Written Statement at Page 5/1 to 5/2 opposing claim of workman, IInd party submits that workman was engaged purely on temporary basis by DET, Raipur for execution of co-axial cable. Workman was engaged on muster roll. He was paid for work done by him. IIn party denies that workman was not paid retrenchment compensaiton or no notice of retrenchment was served on him. As per IInd party, on 31.12.90, amount of Rs. 2125/- was paid to the workman towards retrenchment compensaiton. IInd party denies any assurance was given to the workman for his re-engagement. It is submitted that Shri Daud and Tej Ram casual labours were prohibited as per order passed in OA No. 71/91 dated 28.3.96, OA No. 196/90 dated 6.9.95 respectively. It is reiterated that workman was served with notice of termination, retrenchment compensation was paid to him. Muster rolls is available. On such ground, management prays for reference be answered in its favour.

4. Workman submitted rejoinder at Page 6/1 to 6/2 reiterating his contentions in statement of claim. It is contented that during 1987 to 1990, he completed more than 240 days continuous service during each of the year. His services are terminated without notice, not paid retrenchment compensation.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|--|
| (i) Whether the action of the management of Coaxial Cable Project D/o Telecommunication through Divl. Engineer, Coaxial Cable Project, Shankarnagar, Raipur MP in terminating the services of Shri Ramesh Kumar Avasare is lawful and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

6. Workman is challenging termination of his service alleging he was not paid retrenchment compensation, termination notice was not served on him. He completed

240 days continuous service during each of the year from 1.7.87 to 31.12.90. Workman filed affidavit of his evidence stating he continuously worked from July 87 to December 90. He worked more than 240 days. He was doing work of laying cables, he was paid for laying cables. He was discontinued without notice from 1.1.1991. Shri Ramesh Avasare, Bheemchand, Daud Khan, Tejram Sahare working with him were regularised but his services were not regularised by IInd party. Workman has produced I Card, his working days are shown from 16.1.1997 till 30.11.90. The careful perusal of his I Card Exhibit W-1, shows he completed more than 240 days continuous service prior to his discontinuation in the year 1990. IInd party has not adduced by evidence. Workman is not cross-examined. Evidence of workman remained unchallenged. Though IInd party has contented that workman has paid retrenchment compensation, no evidence is adduced in that regard. The evidence of workman cannot be disbelieved that his services were terminated without notice, he was not paid retrenchment compensation therefore termination of services of workman is in violation of Section 25-F of ID Act. Therefore I record my finding in Point No. 1 in Negative.

7. Point No. 2. In view of my finding in Point No. 1, termination of services of workman is illegal for violation of Section 25-F of ID Act, learned counsel for Ist party Shri Choubey argued that services of workman are not regularised as per scheme in the department. Scheme is not produced. The terms of reference do not relate to regularization of services of workman any defence by learned counsel for workman are beyond the terms of reference. The reference relates to legality of termination of services of workman and does not include the claim for reinstatement.

8. Incidentally the learned counsel for workman relies on ratio held in —

"Case of Chief Conservator of Forest versus Jagannath M. My attention is pointed to Para 22 of the judgement. Their Lordship observed we have given out due thought to the aforesaid rival contentions and according to us, the object of the state Act being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on the facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years."

In Para—26 of the judgment their Lordship observed Therefore what was stated in the aforesaid case cannot called in aid at all by the appellants. According to us the case is more akin to that of State of Haryana Versus Piara Singh and others 1992(4) SCC 118 in which this Court

favoured the State Scheme for regularization of casual labours who continued for a fairly long spell.

In present case, the workman was working with IInd party from 1.7.87 till 30.11.90 for about 3 1/2 years. The reference doesn't relate to denial of regularization. Departmental scheme is not produced by Ist party. Therefore ratio cannot be beneficially applied to present case at hand.

9. Next reliance is placed in—

Case of Union of India and others *versus* Daily Rated Casual Labour Employed under P & T Deptt. Their Lordship observed that it is against this document that he say that non-regularisation of temporary workmen is not a wise policy. As claim for regularization is not included in terms of reference, this Tribunal cannot decide claim beyond terms of reference. Therefore regularization in service cannot be allowed. Considering workman was hardly working for about 3 1/2 years with IInd party. In my considered view, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

10. In the result, award is passed as under:—

- (1) The action of the management of Coaxial Cable Project D/o Telecommunication through Divl. Engineer, Coaxial Cable Project, Shankarnagar, Raipur MP in terminating the services of Shri Ramesh Kumar Avasare is not legal.
- (2) IInd party is directed to pay compensation Rs. One lakh to the workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं० सीजीआईटी/एलसी/आर/102/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं. एल-40012/75/2000-आईआर(डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/

102/2000) of the Central Government Industrial Tribunal cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunications and their workmen, which was received by the Central Government on 30.06.2015.

[No. L-40012/75/2000-IR(DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/102/00

Shri Sanabbar Ali

S/o Mashuk Ali

R/o Suthalia,

Behind Garhi, Tehsil Biaora,

Raigarh (MP)

Workman

Versus

Telecom District Engineer,

Raigarh,

At Biaora,

Rahgarh (MP)

Manager

AWARD

Passed on this 8th day of June 2015

1. As per letter dated 31.5.2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/75/2000/IR(DU). The dispute under reference relates to:

"Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Sanabbar Ali S/o Mashuk Ali *w.e.f.* April 1995 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was initially appointed in Telecom Department as casual labour in September 1987 at SDO Biaora, Distt. Rajgarh. He was working sincerely with devotion. He worked continuously till April 1995. He was appointed against permanent vacant post of labour. He completed more than 240 days continuous service during each of the year. His services deserve to be regularised. Despite he had completed 240 days continuous service, in spite of regularization his services, was discontinued from April 1995 without complying statutory provisions. His services were discontinued without reasons. He was discriminated. Principles of natural justice were not followed.

3. Ist party workman further submits while he was posted at Narsingarh sub-division, he was assigned duty of line testing and recording entries in register. His services are terminated by way of victimization. IInd party is engaged in unfair labour practice. He was not served any notice. No chargesheet was issued to him. Any kind of enquiry was not conducted against him without terminating his services. On such ground, workman submits that termination of his service is illegal. He prays for his reinstatement with backwages.

4. IInd party filed Written Statement at Page 4/1 to 4/2 opposing claim of workman. IInd party submit that as per records available at SDO(T) Rajgarh, workman was never engaged by the management. Claim for workman for regularization of his service is baseless. Violation of provisions of ID Act is denied. IInd party further submits that workman was engaged purely as casual labor for specific for specific work and specific period. As the work was finished, his services were automatically discontinued. There was no question of giving one months notice or paying retrenchment compensation. Workman never completed 240 days continuous service. On such ground IInd party submits that reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (i) Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Sanabbar Ali S/o Mashuk Ali <i>w.e.f.</i> April 1995 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief |

REASONS

6. Workman is challenging termination of his services for violation of Section 25-F of ID Act. Workman contents that he had completed 240 days continuous service since he was engaged in 1987. His services were discontinued in April 1995. IInd party management denied all those material contentions of workman. Workman failed to adduce evidence in support of his claim. Rather he failed to participate in reference proceeding. His evidence is closed on 14-2-2012.

7. Management filed affidavit of evidence of witness Ramjani Khan supporting his contentions that workman was engaged as casual labour. He not completed 240 days continuous service during any of the year. His evidence remained unchallenged as workman failed to cross examine the management withness. As workman failed to adduce evidence in support of his claim and evidence of

management's witness remained unchallenged, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) The action of management of Chief General Manager Telecom in terminating the services of Shri Sanabbar Ali S/o Mashuk Ali *w.e.f.* April 1995 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक नोट मुद्रणालय, देवास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं० सीजीआईटी/एलसी/आर 306/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं. एल-16012/2/96-आईआर (डीयू)]
पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, The 1st July, 2015

S.O. 1349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. case No. CGIT/LC/R/306/97) of the Central Government Industrial Tribunal Cum Labour Court, Jabalpur now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of the Bank Note Mudranalay, Dewas and their workman, which was received by the Central Government on 30/06/2015.

[No. L-16012/2/96-IR(DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/306/97

Shri Subhash Tote,
C/o General Secretary,
Bank Note Mudranalay Shrasmik Sangh,
Dewas, 1231,
BNP Colony, Dewas

...Workman

Versus

General Manager,
Bank Note Mudranalay,
Dewas (MP)

...Management

AWARD

Passed on this 16th day of June 2015

1. As per letter dated 24-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-16012/2/96-IR (DU). The dispute under reference relates to:

"Whether the action of the management of Bank Note Press, Dewas MP in promoting Shri Nansingh Nargave instead of Shri Subhash to the post of Sr. Assistant Electrician (Varishta Sahayak Vidyatkar) is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at page 6/1 to 6/2. Case of Ist party workman is that he was appointed as labour on 17-1-76. Considering his satisfactory performance, he was promoted as Assistant Electrician, Electrician. That there was no adverse report against him, no DE was not conducted against him, promotion of workman was withheld by IInd party till 16-12-05 for the unknown reasons. That since 1995, workman was due for promotion. Many juniors working in the department were considered for promotion. Workman was discriminated. He was denied pay scale to the promotional post till 16-12-05. It is further submitted that the department having realized its wrong, unjust and illegal activity, workman was promoted as per order dated 16-12-05 in the pay scale of Rs. 4000-6000 to the post of Electrician Grade I.

3. Workman submits that for almost 12 years. He was not considered for promotion, junior employees were promoted prior to his promotion. Workman had requested on 29-12-05 to provide information *w.r.t.* criteria adopted for promotion of Nan Singh Nargawe, Rankuram, Muchal and Bhagat Singh, Workman has stated date of appointment of Rankuram Sitaram 28-4-76, Nan Singh Nargawe 13-3-79 & Viram Singh Muchal 2-6-76. Workman was appointed on 17-1-76 and claims to be senior to all of them. Workman further submits that he was denied promotion overlooking his seniority. There was no adverse report against him for denial of promotion. After realizing his mistake, workman was allowed promotion from 16-12-05. The information requested by workman as per letter dated 29.12.05 was not supplied. Workman is claiming difference of pay and increments since 6-9-93 to 16-12-05 with 12% interest. He also claims for according him deemed promotion from 6-9-93.

4. IInd party filed Written Statement at page 7/2 to 7/8 opposing claims of the workman. IInd party submits that BNP Dewas is Government of India undertaking. It is engaged in printing of notes of various denominations. It is factory engaged in production of security paper printing

currency. The unclassified industrial staff engaged in IInd party have separate recruitment rules. Staff of different categories were working in IInd party. Workman joined Bank Note Press on 17-1-76. He was promoted as Assistant Electrician. From 8-5-85, workman was working as Electrician on regular basis. The channel of promotion for electrician is to the post of electrician Grade I.

5. IInd party has contented that in 1995, one vacancy of Electrician Grade I was there. On recommendation of DPC, out of 5 persons under consideration, all were found not suitable. Next senior most person Nan Singh was promoted on recommendation of DPC. In 1996, the dispute *w.r.t.* Subhan Kallukhan, Assistant Diesel Mechanic, BNP was found not maintainable by the Ministry of Labour in 2003, there were two vacancies of Electrician Grade I, 8 persons were in consideration zone. After considering CRs and other record, recommended promotion to Shri S.B. Yadav, Rankuram Sitaram (ST) category. In 2004 there was one vacancy of Electrician Grade I. 5 persons were under consideration Zone including workman. DPC recommended Shri Bhiram Singh Muchal for promotion to the post of Electrician Grade I considering the bench mark Good. In 2005, two vacancies of Electrician Grade I were available. 8 persons were under consideration including the workman. DPC had recommended Shri Bharat Singh Sawaisingh, electrician for promotion of the post of Electrician. It is further contented that after completion of enquiry against workman, he was allowed promotion from 16-12-05. That workman was convicted in criminal case No. 1150/94 for offence under Section 420 IPC. He was removed from service as per order dated 18-12-96. In appeal, workman was acquitted, he was reinstated in service from 5-4-97, Chargesheet was issued to workman under Rule 14 of CCS CCA Rules for violation of security instructions and another chargesheet was issued to workman on 3-3-04 under rule 17 of CCS CCA Rules for misbehavior with Senior officers. It is reiterated that the workman was considered for promotion in 1995, 2003 & 2004 was not found fit for promotion. The contentions of workman that his service record was very good is incorrect. The allegation for discrimination towards workman have been denied.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---|
| (i) Whether the action of the management of Bank Note Press, Dewas MP in promoting Shri Nansingh Nargave instead of Shri Subhash to the post of Sr. Assistant Electrician (Varishta Sahayak Vidyatkar) is legal and justified? | Parties failed to participate in reference as such the dispute could not be decided recording evidence. |
|--|---|

- (ii) If not, what relief the workman is entitled to?"

Workman is not entitled to any relief.

REASONS

7. Workman has raised dispute and filed statement of claim. Written Statement is filed by IInd party. Workman failed to adduce evidence in support of his claim. Evidence of workman is closed on 24-9-2014. Management also failed to adduce evidence. The evidence of management is closed on 26-12-2014. Parties did not participate and appear in the reference proceeding therefore the dispute under reference could not be decided in merit recording evidence of parties. Point No. 1 is answered accordingly.

8. In the result, award is passed as under:—

- (i) The legality of action of the management of Bank Note Press, Dewas MP in promoting Shri Nansingh Nargave instead of Shri Subhash to the post of Sr. Assistant Electrician (Varishta Sahayak Vidyatkar) could not be decided in merit as parties failed to participate in reference despite repeated notices given to them.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1350.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन इंस्टिट्यूट ऑफ फारेस्ट मैनेजमेंट, भोपाल के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर 142/00) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं एल-42012/60/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. case No. CGIT/LC/R/142/00) of the Central Government Industrial Tribunal Cum Labour Court, Jabalpur now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of the Indian Institute of Forest Management, Bhopal and their workman, which was received by the Central Government on 30.06.2015.

[No. L-42012/60/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/142/00

Shri Prakash Sonwane,
 S/o Shri Bansil Sonwane,
 Deepmala Pan Bhandar,
 Durga Chowk,
 Annanagar, Bhopal Workman
Versus
 Director,
 Indian Institute of Forest Management,
 Nehru Nagar, P.B. No. 357,
 Bhopal (MP) Management

AWARD

Passed on this 15th day of June 2015

1. As per letter dated 31.07.00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42012/60/2000/IR(DU). The dispute under reference relates to :

"Whether the action of the management of Director, Indian Institute of Forest Management, Bhopal in terminating the services of Shri Prakash Sonwane, S/o Bansil Sonwane *w.e.f.* 15.01.99 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was appointed on compassionate ground after death of his father Shri Bansil from 2.1.98. That his father Bansil had died on 3.9.97 on duty. Therefore he was appointed on compassionate ground in place of his father. His work was excellent. His services were discontinued from 15.1.99 without assigning any reasons. Any chargesheet was not issued to him. He was not given opportunity of hearing. No enquiry was conducted against him that he completed 240 days continuous service preceding 12 months of his termination. He was not paid retrenchment compensation. Termination notice was not issued to him. His services are terminated illegally. He submits that the employee appointed on compassionate ground cannot be terminated. On such grounds, he submits that his termination is illegal. He prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/7 opposing claim of workman. It is denied that workman was appointed on compassionate ground in place of his father. He denied that father of workman died on duty. As per IInd party, father of workman died in Railway accident on 3.9.97. Workman was engaged as casual labour as Helper.

Workman was not appointed on compassionate ground. It is reiterated that on humanitarian ground, workman was engaged as casual labour. There is no question of issuing chargesheet or conducting enquiry against the workman. Workman had not completed 240 days continuous service. Casual employee is not entitled to notice or retrenchment compensation. IInd party submits that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--|
| (i) Whether the action of the management of Director, Indian Institute of Forest Management, Bhopal in terminating the services of Shri Prakash Sonwane, S/o Bansil Sonwane <i>w.e.f.</i> 15.1.99 is justified. | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

5. Workman is challenging termination of his service for violation of section 25-F of ID Act. That his services were terminated orally without notice. He was not paid retrenchment compensation. IInd party denied above contentions of workman.

6. Workman filed affidavit of his evidence. He has stated that he was appointed on compassionate ground in January 1998. His father died on 3.9.97. He was orally discontinued. He was not paid retrenchment compensation. Notice of termination was not given to him. In his cross-examination, workman says he was not issued appointment letter on compassionate ground. He claims ignorance whether there are rules for appointment in compassionate ground in the department. He admits his father died in train accident. He worked for 11 months. He was paid wages for his working days. He denies that he was engaged as per exigencies. Workman has not produced any documents about his working days. Any co-employee is not examined.

7. Management witness Shri Kyoriyakos filed affidavit of evidence that workman was engaged as casual labour on humanitarian ground. His engagement was on daily wages. There are no rules for appointment on compassionate ground. Evidence of management's witness remained unchallenged. I find no reason to disbelieve his evidence. Workman in his cross-examination says he worked only for 11 months. The engagement was on casual basis. The affidavit of evidence of workman is silent that he completed 240 days continuous service before termination

of his services. The evidence is not sufficient to prove that the workman had completed 240 days continuous service therefore workman is not covered under Section 25 B of ID Act, he is not entitled to protection under Section 25-F of ID Act. For above reasons, termination of workman cannot be said illegal. Therefore I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) The action of the management of Director, Indian Institute of Forest Management, Bhopal in terminating the services of Shri Prakash Sonwane, S/o Bansilal Sonwane *w.e.f.* 15.1.99 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन टेलीफोन इंडस्ट्रीज सीमित भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं० सीजीआईटी/एलसी/आर/55/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं० एल-40012/10/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/55/05) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Telephone Industries Ltd., Bhopal and their workman, which was received by the Central Government on 30.06.2015.

[No. L-40012/10/2005-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/55/05

Shri Rajeshwar Prasad Tiwari,

C/o Dr. H. Saxena,

H.No. 171, Panchsheel Nagar,

Bhopal

Versus

...Workman

Project Manager,
Indian Telephone Industries Ltd.,
Network Systems Unit,
Western Zoen Office,
E-7/657, Ist Floor Arera Colony,
Bhopal

....Management

AWARD

Passed on this 15th day of June, 2015

1. As per letter dated 13.06.05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-40012/10/2005-IR(DU). The dispute under reference relates to :

"Whether the action of the management of Project Manager, Indian Telephone Industries Ltd. Bhopal in terminating the services of Shri Rajeshwar Prasad Tiwari *w.e.f.* 1.3.04 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist Party workman submitted statement of claim at Page 3/1 to 3/4. Case of workman is that he was engaged as Office Assistant of IInd party from July 1999. He was paid Rs. 3100/- per month. His work was satisfactory. Applicant was doing work of dispatch, receiving, computer operating, file work, accounts work as Office Assistant. He was orally discontinued from 1.3.2004. Workman was not served with one months notice before terminating his service. Workman had completed more than 240 days continuous service during each of the year. He is covered as employee under Section 25 B of ID Act. His services are terminated without paying retrenchment compensation. Termination of his service is in violation of Section 25-F of ID Act.

3. Workman further submits that after termination of his service, IInd party engaged Aarti Yadav, Shilpa Jadhav, Rajesh Kumar and Pappu Khendelwal in April 2000, January 2001 & 2003. All those employees are still working with IInd party. Principles of last come first go was not followed. Seniority list as per Rule 76, 77 was not displayed. IInd party has violated Section 25-G of ID Act. He further contented that IInd party has violated Section 25-N & 25-O of ID Act. Permission for his termination was not obtained by IInd party. IInd party has not regularised his services after completion of 240 days continuous service. IInd party therefore engaged unfair labour practice defined under Section Item 10, Section 5 of ID Act. On such ground, workman is praying to set aside order of his termination and allow him reinstatement with backwages.

4. IInd party filed Written Statement at Page 9/1 to 9/5 opposing claim of workman. IInd party has denied workman was engaged as Office Assistant from July 1999. It is denied that workman was paid Rs. 3100/- p.m. IInd party reiterates that workman was engaged on contract basis. The wages were paid for his working days. It is denied that workman was orally terminated from 1.3.04 without issuing notice. It

is reiterated by IInd party that contract labour is not entitled to termination notice or retrenchment compensation. Violation of Section 25-F of ID Act is denied. It is denied that workman completed 240 days service during each of the year. It is denied that IInd party violated Section 25-F of ID Act. Engagement of Aarti Yadav, Shilpa Jadhav, Rajesh Kumar and Pappu Khendelwal is denied. It is denied that principles of last come first go was not followed. Allegation of unfair labour practice are also denied. IInd party submits that workman was engaged on contract basis as per exigencies. He is not entitled to any relief.

5. Workman filed rejoinder at Page 11/1 to 11/4 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the action of the management of Project Manager, Indian Telephone Industries Ltd. Bhopal in terminating the services of Shri Rajeshwar Prasad Tiwari <i>w.e.f.</i> 1.3.04 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Workman challenged termination of his service for violation of Section 25-F, G, N, O of ID Act. IInd party denied all material contentions of workman. IInd party has pleaded that workman was engaged on contract basis. He not completed 240 days continuous service. Workman is not entitled to protection of Section 25-F of ID Act. Documents produced by management Exhibit M-1, M-1(a) shows payment of Rs. 3100 to workman for period March 03 to Feb. 04.

8. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was working as Office Assistant on establishment of IInd party. Workman in his cross-examination says in July 99, he was pursuing his MBA studies. He was not appointed by Project Manager. He was carrying work of discharging accounts, billings, computer operator. He was paid fixed monthly salary. Payments were made in name of Project Manager. The evidence of workman that he was working as Office Assistant, he was paid Rs. 3100/-, his services were orally terminated from 1.3.04 is not shattered in his cross-examination.

9. Management has not adduced any evidence. Considering the documents on record, workman has proved that before oral termination of his services, he was continuously working more than 240 days. He was not served

with termination notice, he was not paid retrenchment compensation. The evidence of workman that other workmen engaged after him were continued in service remained unchallenged. The termination of Ist party workman is in violation of Section 25-F, G of ID Act. For above reasons, I record my finding in Point No. 1 in Negative.

10. Point No. 2 —Termination of Ist party workman is found illegal for violation of Section 25-F, G of ID Act as per my finding in Point No.1 question remains is whether workman is entitled for reinstatement with backwages. I must make it clear that evidence of workman about engagement of other persons namely Aarti Yadav, Shilpa Jadhav, Rajesh Kumar and Pappu Khandelwal during the year April 2000, January 01 & 2003 is not shattered. The workman was terminated without notice, retrenchment compensation was not paid. However, workman in his cross-examination says after termination of his service, he is not doing any work. He was pursuing his MBA studies. As workman was pursuing his further study and was not able to work, workman cannot be granted backwages. His termination from service is illegal.

11. Learned counsel for workman Shri Ashok Shrivastava relies on ratio held in case of.

Durgapur Casual Workers Union *versus* FCI reported in 2015 LAB.I.C.771. Their Lordship dealing with Section 25-H & Item 10 of ID Act held workman were entitled for re-employment.

Reliance is also placed in case of Tapas Kumar Pal *versus* BSNL reported in 2015 (1) SCC-D 299(SC)-299. Their Lordship dealing with question of reinstatement upheld judgement for reinstatement by Tribunal confirmed by Single Bench.

In case of Mackinnon Mackenzie & Company Ltd. *versus* Mackinnon Employees Union reported in 2015-LAB.I.C. 1645. Their Lordship dealing with violation of Section 25-F of ID Act, Retrenchment. One month notice not given to concerned workmen before retrenchment nor one months salary in lieu of notice was paid to them. It amounts to non-compliance of conditions procedure to retrenchment as per Section 25-F (a) & (c) of ID Act. Relief of reinstatement with backwages was granted.

In present case, the services of workman are terminated in violation of Section 25-G, H of ID Act. However workman was pursuing in MBA study therefore reinstatement of workman without backwages would be appropriate. Accordingly I record my finding in Point No. 2.

12. In the result, award is passed as under:—

- (1) The action of the management of Project Manager, Indian Telephone Industries Ltd. Bhopal in terminating the services of Shri Rajeshwar Prasad Tiwari *w.e.f.* 1.3.04 is not legal.
- (2) IInd party is directed to reinstate workman with continuity of service but without back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2015

का.आ. 1352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का धारा 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंस्टिट्यूट ऑफ टेक्नोलॉजी कुरुक्षेत्र के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 81/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं. एल-42012/149/2012-आईआई(डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st July, 2015

S.O. 1352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 81/2012) of the Central Government Industrial Tribunal/Labour Court, No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Institute of Technology, Kurukshetra and their workman, which was received by the Central Government on 30.06.2015.

[No. L-42012/149/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer.

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 81 of 2012. Reference No. L-42012/149/2012-IR (DU) dated 16.01.2013/21.1.2013.

Shri Satbir C/o Shri Sat Pal Bairagi S/o Shri Dhula Bairagi, Resident of Village Barana, Teh. & District Panipat-Haryana.

Workman

Versus

1. The Director, National Institute of Technology, Kurukshetra

Respondent

Appearance

For the workman : None
For the management : None

AWARD

Passed on 23.06.2015

Government of India, Ministry of Labour vide notification No. L-42012/149/2012-IR(DU) dated 16.01.2013/21.1.2013 has referred the following dispute to this Tribunal for adjudication:

"Whether the demand of Shri Satbir son of Shri Baru Ram, Ex-Security Guard for reinstatement and regularization in service with the management of Director, NIT, Kurukshetra w.e.f. 05.01.2009 as security guard is just, fair and legal? If not, what relief the workman is entitled to?"

2. Today the case was fixed for evidence of the workman. Shri Jang Bahadur Yadav appearing on behalf of the workman pleads no instructions. On perusal of the file it reveals that on two occasions last opportunity was allowed to the workman to file his affidavit in evidence. Workman never appeared in person before this Court. No affidavit has also been filed by the workman in evidence despite several opportunities. It appears that workman is not interested to pursue his reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution.

Chandigarh
23.6.2015

S.P. SINGH, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1353.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 10/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं. एल-12012/153/2002-आईआई(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workman, received by the Central Government on 02.07.2015.

[No. L-12012/153/2002-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

Rakesh Kumar
Presiding Officer

I.D. No. 10/2006

Ref. No. L-12012/153/2002-IR (B-II) dated 18.04.2006

BETWEEN

Mr. Shahabuddin S/o Sh. Abu Mohammad Khan
Mohalla-Saiyadwada
Post Office-Bajinath Chowk,
Ghazipur City
Ghazipur (U.P.) 233001

AND

The Regional Manager
Union Bank of India
Regional Office
Ghazipur (U.P.)

AWARD

1. By order No. L-12012/153/2002-IR (B-II) dated 18.04.2006 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mr. Shahabuddin S/o Sri Abu Mohammad Khan and the Regional Manager, Union Bank of India, Ghazipur for adjudication.

2. The reference under adjudication is:

"Whether the action of the management of Union Bank of India in terminating the service of Shri Shahabuddin Khan w.e.f. 02.04.1989 is legal and justified? If not, what relief is the disputant concerned entitled to?"

3. The claim statement A3 has been filed by the workman wherein it has been asserted that on 29.10.1985 he was appointed as Driver in Union Bank of India, was attached as personal Driver to Mr. Mukhtar Ahmad the then Regional Manager of the Bank at Ghazipur, he continuously worked there from 29.10.1985 to 02.04.1989 *i.e.*, about three & half years, thereafter his services were orally terminated in violation of Section 25 ZA of the ID Act. The workman has further stated that he was entrusted with duty of driving vehicles and his services were also used for other bank work like transmitting of cash, clearing or stationery etc.

4. It has further been pleaded that the workman was also entitled to draw advance for the purpose of maintenance of Mahendra Jeep UPH 5922 insured in the name of M/s Union Bank of India, Regional Office, Mahua Bagh, Ghazipur. The job of the workman which included works like transmitting cash, clearing of stationery was entitled for preference in appointment on the post of peon cum driver in accordance with Para 20.16 of Bipartite Settlement, 1966 applicable to the Union Bank of India. The relevant paragraph 20.16 is as under:

"20.16 Bank work like transmitting cash, clearing or stationery will not be entrusted to private drivers empowered by bank officers. It as a result the services of a driver are required for doing such bank work, the existing private driver, if he was already

doing the bank work, shall be given preference for appointment as a peon-cum-driver. Such peon-cum-driver, whenever called upon to do so; drive any motor vehicle, being used for the bank's work."

5. The workman further pleaded that during employment of the workman the then Regional Manager, namely, Sir Mukhtar Ahmad, on various occasions asked the workman to perform his private household works after the duty hours which was refused by the workman on few occasions which caused Sri Mukhtar Ahmad to nurse grudge against the workman.

6. It has been further pleaded that one vacancy of the post of driver-cum-peon occurred in the month of March, 1998 in the Union Bank of India against which the applicant applied. But then Regional Manager, Namely Sir Mukhtar Ahmad deliberately and willfully did not submit the academic records of the applicant before the respondent No. 2 through proper channel for the said post.

7. On being aggrieved due to arbitrary action of the then Regional Manager Sir Mukhtar Ahmad, Writ Petition 1950/1988 was filed by the workman in the Hon'ble High Court and the court passed an order dated 23.03.1988, its relevant portion is as under:

"It is averted that the petitioner has already made application for his appointment as Driver. It is also averted that the petitioner is already in the employment of the Manager of the Bank. If the petitioner has in fact made application to the Bank for his appointment as Driver the same shall be dealt with on merits and no other appointment shall be made before passing an order on the application of the petitioner both these observations, the petition is disposed of finally."

8. The workman asserts that one interview letter dated 16.04.1988 was issued asking him to appear before the interview committee on 30.04.1988, but he was not allowed by respondent No. 3 Regional Manager of the Bank to appear in the interview, then applicant approached the higher authorities of the bank appraising the entire fact and the victimization of the applicant by the then Regional Manager. In response thereto the Dy. Regional Manager of the bank issued letter dated 01.07.1988. Subsequently, the applicant was informed *vide* letter dated 15.1988 that the candidature of the applicant for the appoint on the permanent post of driver-cum-peon has been rejected on the ground that the school leaving certificate of class VIII, submitted by the applicant during the course of interview was found to be forged one.

8. It has also been pleaded in the claim statement that the applicant made representation to the respondent No. 2 submitting that no such forged document was submitted by the applicant and it is a conspiracy on the part of Sri Mukhtar Ahmed to eliminate him from the selection as

he was nursing grudge against the applicant. The applicant also submitted the respondent no. 2 the copy of the school leaving certificate of class VIII before opposite party no. 1 so that it may be verified.

9. An enquiry was conducted to verify the document, in pursuance to which report dated 12.04.1989 was sent in which it was concluded that school leaving certificate produced by the applicant was genuine one.

10. It is further pleaded when the respondent no. 2 did not take any final decision with respect to the selection of the workman on the post of Driver-cum-peon; the applicant filed writ petition in the Hon'ble High Court, which was disposed of by the Hon'ble High Court, *vide* order dated 7.03.1990 directing the respondents to decide the representation dated 12.06.1989 which was pending within 2 months. The respondent no. 2, thereafter, *vide* order dated 02.05.1990 finally took decision rejecting the selection of the workman on the post of driver-cum-peon. In the meantime applicant services were also orally terminated by the respondent no. 2 *w.e.f.* 02.04.1989.

11. It has been further pleaded that on the one hand the applicant was denied appointment on the permanent and substantive vacancy of driver-cum-peon and on the other hand his services were illegally terminated by an oral order *w.e.f.* 02.04.1989. In fact the management of the bank acted in the most arbitrary and illegal manner while orally terminating the services of the applicant working on the post of driver continuously since 29.10.1985 which is in violation of section 25ZA of the I.D. Act, 1947 which is unfair labour practice on the part of the management of the bank. It is specifically stated here that the applicant was in continuous service since 29.10.1985 *i.e.* for more than one year but the conditions enumerated under section 25ZA has not been complied with while orally terminating the services of the applicant *w.e.f.* 02.04.1989.

12. It is further pleaded that Bipartite Settlement 1966 applicable in the case of the applicant provides the procedure for taking any disciplinary authority against any employee of the bank *vide* paragraphs 19.11 and 19.12. In the present case no disciplinary proceedings were initiated at all against the applicant but the service was orally terminated as he was victimized for claiming regular appointment on the permanent and substantive vacancy of driver-cum-peon.

13. The workman has pleaded that other 8 persons who were discharging the similar duties were given regular appointment on the permanent post of driver-cum-peon but applicant has been discriminated. The names of 8 persons have been mentioned in para 18. The applicant has stated that respondent/opposite party is following illegal and unfair labour practice contrary to the provision of Constitution of India and I.D. Act, 1947. The workman has requested to set aside the oral termination *w.e.f.*

02.04.1989, reinstate him with full back wages and continuity of service, absorb him on the substantive post of peon-cum-driver after setting aside the order dated 02.05.1990.

14. The opposite party has filed written statement A-28 mentioning therein the preliminary objection as well. The opposite party emphasized that the applicant was not employed with bank, there was no employer employee relationship at any point of time, he is not covered under the definition of workman as envisaged under Section 2 of the I.D. Act. It has been mentioned in the written statement that Mr. Shahbuddin was personal driver of Mr. Mukhtar Ahmad, the then lead district Manager, therefore termination of his services from the bank would not arise at all the reference order itself is bad in the eyes of law, the claim of the workman is not tenable in any case. The main allegations of the claim statement have been denied by the opposite party. The procedure for appoint of peon etc. have been given in para 2 & 3 of written statement.

15. It has further been asserted by the opposite party that the workman could not legally appointed driver-cum-peon by Branch Manager the statement are totally false and concocted by the workman. The Chief Managers at branches and executives of the bank are permitted/allowed to engage personal drivers of their choice and are reimbursed salary paid to their personal drivers up to a specific limit stipulated by the central office and Bank has no role or hold for the engagement of such drivers. The engagement of the applicant as personal driver is done by an executive and not by the bank and it has no role to play in the matter. The engagement of the applicant is the personal decision of the Executive concerned and there exist no employer and employee relationship between the bank and the applicant. Since the bank has not recruited the applicant therefore it cannot be claimed that he is an employee of the bank or a workman as defined in the I.D. Act., 1947. No appointment letter has been given to the applicant by the bank. He was also not on the muster roll and/or on the pay roll of the bank. It is admitted fact that he was a personal driver of an executive of the bank.

16. Hon'ble High Court order dated 23.03.1988 in writ petition No. 1950/1988 has been quoted by the opposite party and it has further been stated the application of the workman was considered by the bank although his name was not sponsored by the Employment Exchange. During the process of interview it was revealed by Mr. Shahabbudin had submitted some bogus certificate in support of his qualification. After revelation matter was properly investigated and it has been confirmed that Sri Shahbuddin had tried to get employment in the bank through forged documents and thereafter his candidature was rejected by the answering bank as there is no room for dishonest person in the Industry like bank and financial institutions.

17. It is also pleaded that thereafter Shahbuddin again moved a writ petition before the Hon'ble High Court,

Allahabad for considering his representation dated 12.6.1989 regarding cancellation of his candidature for the post of Driver which was already under consideration before Dy. General Manager, Zonal Office, Lucknow. The said writ petition was finally disposed of by the Hon'ble High Court with following observations/orders dated 07.03.1990;

"The only grievance of the petitioner is that his representation to the Dy. General Manager, Zonal Office, Lucknow, has not been considered. The representation is said to be dated 12.6.1989. If it is correct, the aforesaid authority is directed to decide the said representation of the petitioner within a period of two months from the date of the service of the certified copy of this order upon him. With these directions the petition is disposed of."

18. Sri Shahbuddin had moved an application dt. 22.3.1990 along with the copy of the representation dt. 12.6.1989 before the Dy. General Manager, Zonal Office, Lucknow. The said representation was duly considered and replied by the said authority by letter dated 02.05.1990 in which it was clearly mentioned that Sri Shahbuddin had appeared for interview before the interview board held on 30.04.1988 and 06.07.1989 for the post of driver-cum-peon at Regional Office, Gazipur and submitted several documents along with a copy of transfer certificate which had been found forged as such his candidature for the post of driver-cum-peon could not be considered. The order passed by the Dy. General Manager, Zonal Office, Lucknow was final as no appeal or writ petition had been preferred against the said order as the best of knowledge of the answering bank as such claimant had no right to agitate the matter again and again and to harass the opposite party bank.

19. It is also pleaded that it is clear that from the facts mentioned in the preceding paragraphs that the candidature of Sri Shahbuddin had been considered by the answering bank very liberally but every time he approached all the forums not with clean hands. It has been pleaded in the written statement that the applicant approached to Hon'ble High Court twice but he could not get the back door entry as such he approached with ulterior motives before this Tribunal through the reference order. The opposite party has specifically stated that bank is an undertaking of Govt. of India, it has got its rules for appointment of sub staff/driver, no appointment can be made otherwise than without following the established rules. The opposite party has requested the Tribunal to hold that the applicant is not entitled to any relief.

20. Thereafter rejoinder A1-30 has been filed on behalf of the workman reiterating the pleas taken in the claim statement, with the denial of main allegation leveled by the opposite party in the written statement.

21. The workman has filed list of documents, paper No. C-6, dated Nil; and additional lists dated 09.03.2007, paper No. C-31, dated 12.08.2009, paper No. C-38 and dated

04.03.2011, paper No. W-43. The management has filed list of documentary in rebuttal *vide* list of documents dated 04.03.2011, paper No. M-44 and dated 06.01.2012, paper No. M-48. The workman examined himself, whereas the management examined Sri Avaneesh Kumar Singh, Sr. Manager (P) in support of their respective claim. The parties availed opportunity to cross-examine the each other's witnesses apart from putting oral arguments.

22. Heard learned authorized representatives of the parties at length and perused entire evidence on record.

23. The authorized representative of the workman has contended that the workman was appointed as Driver with the Bank on 29.10.1985 and worked as such up to 02.04.1989 continuously when his services have been terminated by the opposite party bank without assigning any reason or rhyme or complying with the mandatory provisions of the Industrial Disputes Act, 1947. The workman has also argued that when one vacancy of the post of Driver-cum-Peon occurred in the Bank he applied for the same and since the opposite party was not forwarding his testimonials the workman approached Hon'ble High Court for redressal of his grievances. It is submitted that Hon'ble High Court *vide* their order dated 23.3.1988 directed the opposite party to consider his candidature against the post of Driver; and the management getting annoyed from this declared his transfer certificate to be forged one and denied him appointment on the post of Driver.

24. In rebuttal, the authorized representative of the management has submitted that the opposite party being Central Government Undertaking observed certain Rules for making appointment against the vacancies of Sub Staff, whether temporary or permanent. It has contended workman was never appointed by the Bank; rather he was engaged as personal driver of Sri Mukhtar Ahmad, the then District Lead Manager and the Bank has no role in his engagement altogether. It is also submitted that the applicant had never been paid by the Bank rather Sri Mukhtar Ahmed who engaged him used to pay him on his own and the Bank used to reimburse Sri Mukhtar Ahmed for the same, thus, there was no relationship of employee and employer between the applicant and the Bank. It is also submitted that the candidature of the applicant against the post of Driver-cum-Peon was test as per directions of Hon'ble High Court; but the applicant could not fulfill the requirements being his testimonial forged one. It is vehemently argued by the learned authorized representative of the Bank that since the workman was never appointed/engaged by the bank in any capacity, therefore, there arises no question of terminating his services at any point of time.

25. I have given my thoughtful consideration to the rival submissions of the learned authorized representatives of the parties and scanned entire evidence on record in light thereto.

26. The workman has come up with a case that he had been appointed as driver by the Bank and worked

continuously till illegal oral termination of his services. It is also the case of the workman that when there occurred a vacancy of Driver-cum-Peon in the Bank, he applied for the same; but the Bank authorities showed their indifference to his application. Aggrieved from attitude of the Bank authorities, he approached Hon'ble High Court, which pleaded to direct the Bank to consider his candidature against the vacancy of Driver; but the management of the Bank illegally rejected his candidature on the plea that the school transfer certificate submitted by him is forged one.

27. The management of the Union Bank of India, rebutting the claim of the workman has come up with a clear cut case that being a public sector undertaking it has certain specified Rules regarding recruitment on various post in the Bank, including sub staff posts of Driver. It is also the case of the management that the workman had never been engaged/appointed by the bank management in any capacity nor any payment was made to him at any point of time. It has also been pleaded by the Bank that the workman was actually engaged by Sri Mukhtar Ahmad, the then Lead Manager as his personal driver. It was Sri Mukhtar Ahmad who used to pay the workman and Sri Mukhtar Ahmad was reimbursed accordingly, under Rules, thus, there was no relationship of employer and employee between the bank and the workman, therefore, there arise no question of terminating services of the workman by the bank at any point of time or violating any of the provisions of the Industrial Disputes Act, 1947. The bank management has also come forward with specific pleading that the workman was considered against the vacancy of Driver as per directions of Hon'ble High Court; but the workman could not quality the same as the school leaving certificate submitted by the workman was found to be forged one.

28. The workman has stated in his cross-examination that no appointment letter was given to him and that his appointment was *ad hoc*. He further stated that he was not given any letter regarding attachment with Sri Mukhtar Ahmad. The workman admitted his signatures on paper No. 48/2, application form and stated that he submitted Transfer Certificate of Chashma-e-Rahmat Oriental College, Gazipur.

The management witness, in his cross-examination, stated that the workman was not working with the Bank and he was personal driver of Sri Mukhtar Ahmad. He also stated that Mukhtar Ahmad used to pay the workman out of his pocket and Sri Mukhtar was paid Driver Allowance for making payment to the workman. The witness stated that the workman was disqualified for the post of driver for production of false educational qualification certificate.

29. No doubt, the Bank being a public sector enterprise has to follow certain Rules and Regulations while making recruitment on various post/vacancies. As regard for the vacancies on the Sub Staff, it has to notify the vacancies to

the Employment Exchange for the purposes of seeking list of eligible candidates. On receipt of list, the sponsored candidates, the eligible candidates are called for interview and the selected candidates have to undergo further recruitment procedure; but in the instant case no such procedure was adopted. On the other hand the workman has himself admitted that he was not given any appointment letter, this strengthens the contention of the management that the workman was personal driver of Sri Mukhtar Ahmad, Regional Manager. Admittedly, under instructions, the Chief Managers at branches and executives of the Bank are permitted to engage personal drivers of their choice and are reimbursed salary paid to their personal drivers up to a specified limit stipulated by the Central Office; and the Bank has no role or hold for the engagement of such drivers.

The workman failed to reply upon any cogent documentary evidence to substantiate this fact that he was engaged/appointed by the bank and was paid by the bank. Further, the workman himself has pleaded in para 06 of the statement of claim that when a vacancy of Driver-cum-Peon occurred in the bank, he applied for the same. Now the question arises when he was already appointed by the bank, why did he apply again, this goes to fortify the pleadings of the management that the workman was personal driver of Sri Mukhtar Ahmad. Thus, it is established that there was no relationship of employee and employers between the workman and the management of the bank. Accordingly, it cannot be held that the Bank ever terminated the services of the workman at any point of time and thereby violated any of the provisions of the Industrial Disputes Act, 1947.

30. In 2006 (108) FLR R.M. Yallatti & Asstt. Executive Engineer Hon'ble Apex Court has observed that initial burden of proof to substantiate its pleadings through cogent evidence, lies upon the workman.

Accordingly, in view of law cited above, the burden that lied upon the workman to come with the evidence to substantiate his pleadings that he was appointed/engaged by the management of the Bank, following due process and his services have been terminated in utter violation of provisions contained in Industrial Disputes Act, 1947; but he failed to do so.

31. The workman has also pleaded that the management of the Bank has wrongly and maliciously refused his candidature against the post of Driver for fake educational certificates. In this regard the workman, in his cross-examination has admitted that the signatures mentioned on the application form, paper No. 48/2, are his. However, he stated that he did not file the same; but he simply signed it. In the said application form it is mentioned that he is working as personal driver in the Union Bank of India since 29.10.85. In the said application form, in column of educational qualification it is written that he is eighth standard pass from Intermediate College, Khalipur, Distt. Gazipur. The workman in cross-examination has denied to have submitted any Transfer Certificate of Intermediate

College, Khalipur, Distt. Gazipur; rather he has stated that he submitted Transfer Certificate of Chashma-e-Rahmat Oriental College, Gazipur. The management has filed photocopy of the Transfer Certificate No. 11051 of Intermediate College, Khalipur, Gazipur, which was found to be forged one, on verification.

Now once the workman has admitted his signatures on the application form then he cannot escape from its contents in which he has mentioned that he has passed his eighth standard from Intermediate College, Khalipur, Distt. Gazipur; and when it was found on verification that the Transfer Certificate, claimed to have been issued by Intermediate College, Khalipur, Distt. Gazipur, is forged one then the management of the Bank had rightly rejected the candidature of the workman. Taking the other aspect of the case, as stated by the workman, in his cross-examination that he did not enclose any Transfer Certificate with the application form. If this statement is taken to be true then again his candidature cannot be accepted for the want of supportive documents in support of his educational qualification. Apart from oral statement of the workman, there is no cogent evidence that the workman passed eighth standard from Chashma-e-Rahmat Oriental College, Gazipur and he enclosed Transfer Certificate of the said college, leaving no alternate than to rely on the evidence adduced by the opposite party.

32. Hence, from the facts and circumstances of the case and discussions made hereinabove; I am of considered opinion that the workman was personal driver of the Regional Manager of the Bank; there was no relationship of employee and employer between the workman and the management of the Bank, therefore, there was no termination of services of the workman by the bank or violation of any provision of the Industrial Disputes Act, 1947. Further, the bank management rightly, rejected the candidature of the workman for the want of requisite education qualification/production of fake certificate. Accordingly, I come to the conclusion that the workman, Sri Shahabuddin Khan is not entitled to any relief.

33. The reference under adjudication is answered accordingly.

34. Award as above.

Lucknow, RAKESH KUMAR, Presiding Officer
04th June, 2015.

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनैटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ सं. 29/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं. एल-12011/30/2005-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 29/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of United Bank of India and their workmen, received by the Central Government on 02/07/2015.

[No. L- 12011/30/2005 - IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

RAKESH KUMAR,
PRESIDING OFFICER

L-12011/30/2005-IR (B-II) dated 05.07.2005

I.D. No. 29/2005

BETWEEN

The Central Committee Member
National Confederation of Bank Employees
SBI, Pandu Nagar, Kanpur
Kanpur (U.P.)

AND

The Chief Manager
United Bank of India
4B, Habibullah Estate, Hazratganj
Lucknow

AWARD

1. By Order No. L-12011/30/2005-IR(B-II) dated 05.07.2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between The Central Committee Member, National Confederation of Bank Employees, SBI, Pandu Nagar, Kanpur (Espousing cause of Sri Kishan Gopal Kataray) and the Chief Manager, United Bank of India, Habibullah Estate, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of the Management of United Bank of India in Imposing the Penalty of Reduction in Pay by one Stage with Cumulative Effect on Sri Kishan Gopal Kataray, Special Assistant *Vide* Order Dated 03.05.2003 is Legal and Justified? If not, what relief is the workman concerned is entitled to?"

3. The National Confederation of Bank Employees has filed the claim statement A 1 -7, stating therein that the workman Sri K.G. Kataray was appointed as Clerk on 02.05.1970 in United Bank of India, later on was confirmed on 02.11.1970

after completing probation period with excellent performance, promoted as Special Assistant 24.05.1995 on the basis of his seniority and bright working carrier, and was confirmed on 24.01.1996 in the same branch.

It has also been stated therein that the workman performed his duties with utmost sincerity and integrity. No superior could find a chance to question the workman.

The workman has further emphasized that he has an unspotted service carrier of 36 years.

On 22.01.2000 the workman was issued a letter No. CRM/CR/ADMN/LHB/329/2000, to explain the seven points based financial loss for Rs.52500/-plus Interest thereon. It is essential to quote that amount of Rs. 52500/- was classified among four withdrawals from different accounts, in different dates as under:

- A- Rs.10000/- from Account No.4606 on 09.01.98
- B- Rs.7500/- from Account No.4151 on 15.10.97
- C- Rs. 25000/- from Account No. 1143 on 26.11.97
- D- Rs. 10000/- from Account No. 1143 on 28.02.98

All the withdrawals were said to be made with same irregularities like, no signature of drawer were tallied and pass book did not accompany the withdrawals form/slip.

5. The workman has further stated that in the eyes of law, all the four above transaction is of identical nature. If any decision is taken by bank for any one of the four, that decision must be identical for rest of all transactions, on the basis of equality before law.

6. It has been asserted that item C & D mentioned in para No. 5 of them claim statement could not be termed as workman's misconduct as decided by the bank itself. Item No. A & B in para 5 can not be treated as misconduct on the part of the workman since they were identical as C& D, but the bank management without any legal and genuine ground treated it as negligence and misconduct, and thereafter bogus charge sheet dated 27.04.2002 was issued to the workman, leveled allegation under item A & B mentioned in para 5.

7. The workman has pleaded that the management of the bank lost the right to sustain the charge sheet, due to prejudice, as, they reported the different dates for the same & one withdrawals for Rs. 7500/- in letter dated 22.01.2000 and letter dated 20.02.2002. In letter dated 22.01.2000. The event is said to take place on 15.10.97, whether in charge sheet dated 20.02.2002 it is said to take place on 15.11.97. On this ground this charge sheet has one fate; it is to be set aside.

8. The workman passed payment by way of two withdrawals to well known and frequent visiting customers. So far as, the question of withdrawal with passbook is concerned, the Bank in its verdict has given an example that pass book may not be essential at the time of withdrawal, by

deleting two withdrawal transactions under the purview of misconduct *i.e.* item C & D under para 5. It has happened in the same show cause notice and charge sheet.

9. The act of passing two payments to valued customers is an act done in good faith. So as signature tallying is concerned, it was merely, the workman's error of judgment, who was working in the capacity of special Asstt. *i.e.* payment passing official. The work done, in good faith and error of judgment do not constitute a misconduct. So charge sheet is not more than a waste paper and deserves to be set aside.

10. The bank employees federation has further alleged that unfair and improper enquiry was conducted on imaginative ground, revengeful attitude was adopted by the then Dy. Manager. The enquiry officer favoured the management against natural justice and sufficient opportunity was not provided to the workman, request for second opinion by another hand writing expert submitted by the workman was not entertained by the prejudiced enquiry officer the workman has alleged unfair labour practice and improper enquiry by the management thereby resulting into illegal punishment awarded to the workman, and his pay was reduced to the lower stage with cumulative effect causing huge pecuniary loss. The workman prayed to quash the enquiry and the punishment awarded to the workman, with prayer to restore the financial loss with the interest and all consequential benefits as well.

11. The workman has filed several documents as per list C-11 viz;

- i. Show Cause Notice
- ii. Its reply
- iii. Charge sheet
- iv. Enquiry Report
- v. Letter from Defence (3 dated 20.01.03)
- vi. Letter from Defence (1; dated 21.01.03)
- vii. Defence Brief
- viii. E.O. Brief
- ix. Letter D.A. & A.A.
- x. Appeal from workman to D.A. & A.A.
- xi. Letter Related with case of Mr. Chariyari (5) Etc.

12. The opposite party/management has filed written statement A2-15, denying the allegations leveled by the workman. The management has asserted that the workman was posted as Special assistant at Lahurabir branch. Varanasi in the bank but he was very careless and negligent with his duties therefore show cause notice/letter dated 22.02.2000 was issued to him for the misconduct relating to four incidents referring payment dated 09.01.1998 for 10000/-, 15.10.1997 for Rs. 7500/-, 26.11.1997 for Rs. 25000/- and dated 28.02.1998 for Rs. 10000/-, the management has also pleaded that charge sheet dated 20.04.2002 was issued to the workman by the Chief Manager of the bank in respect of two major incidents mentioned in para 21 of the written statement, alleging that the workman has violated the bank's

guidelines and his act has caused financial loss of 17500/- plus interest. Sufficient opportunity was given to the workman, he submitted the reply dated 15.04.2002 thorough disciplinary enquiry was conducted by the management, both the charges were proved against the workman thereafter *vide* order dated 03.05.2003 reduction of pay to one stage lower with cumulative effect was imposed on the workman. The management has stated that fair and proper enquiry was conducted; full opportunity was given to the workman as per rules. Main contention of the claim statement has been denied by the management and it has also been stated that there was no discrimination; the other case of Sri. B.L. Chariyari was different from that of the workman.

13. Taking into account the absence of the workman on previous dated negligent conduct, the then Presiding Officer on 19.09.2007 passed an order to proceed ex-parte against the workman. Time was sought by the workman to move application to set aside the said order. The workman was permitted to file rejoinder on the payment of cost of Rs. 300/-, *vide* order dated 15.12.09. On 13.04.2010 two preliminary issues were framed by the then Presiding Officer regarding the fairness of the said departmental enquiry, prejudice and natural justice etc. Later on several dates were fixed but none appeared for the workman. My learned predecessor observed on 18.10.2012 that the workman has not been appearing before the tribunal since 2009. Witnesses were examined by the management before the Tribunal. Thereafter sufficient opportunities were provided to the workman for cross examination but none appeared on his behalf. Moreover, no evidence in support of the claim statement was adduced by the workman.

14. Arguments advanced on behalf of the opposite party management were heard at length and record was perused.

15. As stated hereinabove, the employees union has alleged in the claim statement that without holding fair and proper enquiry, prejudiced attitude was adopted, without any genuine subsistence valid ground, the workman Sri K.G. Kataray was punished by the bank, he was reverted to the lower pay scale with cumulative effect causing thereby huge financial loss and unnecessary humiliation as well. It has also been alleged in the claim statement that sufficient opportunity was not provided to the workman, and his request for thorough examination by the hand writing expert was turned down by the enquiry officer without assigning any satisfactory reason.

16. The management has denied the ground taken by the workman, and has elaborated all the relevant facts in the written statement, mentioning therein that detailed, thorough and fair enquiry was conducted sufficient opportunity was provided, two charges were proved against the workman. The management has asserted that the workman had violated guidelines issued by the Bank's

Manual clause 37, page No. 154 Part II deposit, and is due to his misconduct and carelessness the bank has been exposed of financial loss of Rs. 17500/- and interest thereon.

17. On behalf of the management Sri A.K. Srivastava, retired Dy. GM, Sri Girish Dutt Misra and Sri K.K. Pandey were examined as DW in support of the written statement.

18. The opposite party management has successfully justified the impugned order dated 03.05.2003. The Learned Authorised Representative for the management has cited the principle by Hon'ble Allahabad High Court in 2008(118) FLR 1164 M/s Uptron Powertronics Employees Union, Ghaziabad through its Secretary and Presiding Officer, Labour Court (II) Ghaziabad. Law laid down by Hon'ble Supreme Court in 1979 (39) FLR 70 (SC) and 1979 (39) FLR 70 (SC) has also been relied upon.

19. After having heard the arguments advanced by the management, in the light of the evidence available on record, it is inferred that the workman is not entitled to any relief in this industrial dispute. The facts mentioned in the claim statement have not been proved at all.

20. In the facts and circumstances mentioned above I come to the conclusion that workman is not entitled for any relief.

21. Award as above.

LUCKNOW
10.02.2015

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1355.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 76/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/07/2015 को प्राप्त हुआ था।

[सं. एल-12011/96/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 76/12) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 02/07/2015.

[No.L-12011/96/2011-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/76/12

General Secretary,
Dainik Vatan Bhogi Bank Karamchari Sangathan,
Central Office, F-1, Karmbhoomi,
Tripti Vihar,
Opp. Engineering College,
Ujjain.

... Workman/Union

VERSUS

The Managing Director,
Bank of India,
Head Office, Star House,
C-5, G Block, Bandra Kurla Complex,
Bandra (East)
Mumbai

... Management

AWARD

Passed on this 16th day of June 2015

1. As per letter dated 26-6-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/96/2011-IR (B-II). The dispute under reference relates to:

"Whether the action of the management of Bank of India in terminating the services of Shri Ashok Kumar Vyas *w.e.f.* 2-6-08 without adhering the provisions of ID Act, 1947 is legal and justified? What relief Shri Ashok Kumar Vyas is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary of Daily Wage Bank Employees Union, Ujjain. The case of workman is that workman Shri Ashok Kumar Vyas was engaged on daily wages by then Bank Manager Shri N.S. Shah from 17-3-89. Workman was engaged orally. His work was satisfactory and he was working every day for 8 hours. Workman was initially paid wages Rs. 30/- per day. Wages were increased to Rs. 35,50,100 per day. That workman had completed 240 days continuous service. He was in employment of IInd party for 90 days. Workman was paid bonus. On 2-6-08, his services were discontinued without notice. Workman reiterated that his services were terminated without notice, retrenchment compensation was not paid to him though he completed 240 days continuous service before his discontinuation. Workman prays that for violation of Section 25-F of ID Act, his termination from service be set-aside. He also prays for reinstatement with back wages.

3. IInd party filed Written Statement opposing claim of the workman. IInd party submits that dispute is raised by the Union challenging illegal termination. Union has no locus to raise dispute. Employer employee relationship does not exist between parties. He is not workman as defined under Section 2(s) of ID Act. The casual labours engaged in the Bank are compensated for their service. That Ist party has not discussed anything with regard to his employment with the management. The documents are not produced. The claimant was not employed by Bank on regular basis. He was not appointed against permanent sanctioned post. IInd party further submits that Bank is covered by statutory rules and regulations. Persons seeking employment in bank has to face the procedure prescribed for appointment. Only such employees are entitled for regular employment. The Branch manager in order to ensure smooth customer service are engaging persons when there is temporary increase in work, when regular sub staff is on leave. The persons who are so engaged are compensated by fair amount. Branch Manager is not Appointing Authority. As per directions of Central Government, employment of sub cadre staff is made in the list of the candidate called from the Employment Exchange. The Government Organisation are bound to notify vacancies to Employment Exchange. When suitable candidates are available, a certificate is issued by Employment Exchange for appointment from other sources. It is reiterated that the persons engaged on casual basis are paid by the Managers and is entitled to reimbursement of such amount. That the services are covered by bipartite settlement, Sastry Award, Desai award, the engagement of daily wage employee ends on the day, he need not report on next day. IInd party denied workman completed 240 days service. Violation of Section 25-F of ID Act is denied. It is denied that workman was engaged from 17-3-89 on daily wages. It is submitted that claim of workman is not tenable. Workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--|
| (i) Whether the action of the management of Bank of India in terminating the services of Shri Ashok Kumar Vyas <i>w.e.f.</i> 2-6-08 without adhering the provisions of ID Act, 1947 is legal and justified? | Workman failed to establish his services are terminated in that violation of provisions of ID Act. |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

5. The dispute is raised by Union challenging termination of workman Shri Ashok Kumar Vyas in violation of Section 25-F of ID Act. Management has opposed his claim. Workman Ashok filed affidavit of his evidence. Workman

has stated that from 17-3-89 to 2-6-08, he was working in the Bank. He was terminated without notice. However workman did not appear for his cross-examination. Union Representative submitted that workman doesnot desire to adduce oral evidence therefore evidence of workman cannot be considered.

6. At the time of argument, Union Secretary Ram Nagwanshi produced certain documents, copy of letter dated 12-5-15 addressed to Branch Manager, copy of reply filed in R/27/12 to the application for production of documents. It cannot be said legal evidence for deciding controversy between parties. Copy of awards in R/180/00 relating to termination of services of Shri Sandeep Yadav & R/4/07 pertaining to termination of service of Chhotelal Kushwah are produced by Shri Ram Nagwanshi. These are awards passed in the individual matters. Claim of workman cannot be substantiated from those awards. When he failed to appear for cross-examination, his evidence cannot be considered for deciding controversy between parties. As per ordersheet dated 31-7-2014, management submitted that no evidence is to be adduced in the matter as such controversy between parties cannot be decided for failure of parties to adduce evidence. It is surprise to say that workman has failed to establish that his services are terminated in violation of Section 25-F of I.D. Act. Accordingly I record my finding in Point No.1.

7. In the result, award is passed as under:—

(1) Workman failed to establish that action of the management of Bank of India in terminating the services of Shri Ashok Kumar Vyas *w.e.f.* 2-6-08 is illegal for violation of Section 25-F of ID Act.

(2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (77/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं. एल-12011/103/2011-आईआर(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 77/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between

the management of Bank of India and their workmen, received by the Central Government on 02.07.2015.

[No. L-12011/103/2011-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/77/2012

General Secretary,
Dainik Vetan Bhogi Bank Karamchari Sangathan,
Central Office, F-1, Karmbhoomi,
Tripti Vihar,
Opp. Engineering College,
Ujjain.

....Workman/Union

VERSUS

The Managing Director,
Bank of India,
Head Office, Star House,
C-5, G Block, Bandra Kurla Complex,
Bandra (East)
Mumbai

....Management

AWARD

Passed on this 16th day of June 2015

1. As per letter dated 26-6-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/103/2011-IR(B-II). The dispute under reference relates to:

"Whether Shri Ashok Kumar Vyas is entitled for payment of bonus for the period from 1-1-2006 to 2-6-2008? If yes, what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim on 16-11-2012. Case of Ist party workman is workman was orally engaged in extension branch in Dewas branch of the Bank on daily wages Rs. 100/- as peon. Workman was required to work from opening till closing of the Bank. That wages of the workman were increased from Rs. 50 to 100 per day. He was continuously working more than 240 days from 1-1-2006. When workman claimed appointment on permanent post and payment of bonus, his services were terminated from 2-6-08. Workman was not served notice, retrenchment compensation was not paid to him. The

dispute about denial of bonus was raised before ALC, the dispute has been referred.

3. IInd party filed Written Statement on 23-9-13 opposing claim of the workman. IInd party submits that workman is not member of the Union. Union has no locus standi to raise the dispute. Employer employee relation is not existing between parties. Workman is no covered under section 2(s) of ID Act. Employment of any person in industry is variable. The apprentice is not covered as workman under Section 2(s) of ID Act. Branch Managers are authorized to engage persons as per exigencies. The Branch Manager is not Appointing Authority. The Branch Manager can engage sub staff temporarily when there is increase in work. In the matter of recruitment, the reserved policy needs to be followed. The names are required to be called from Employment Exchange after advertising post. It is further submitted that casual workman are paid wages as per the prevailing rates. It is reiterated that workman is not covered under Section 25-B of ID Act. It is denied that workman was engaged from 1-1-2006. It is denied that his services were discontinued without notice.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | | |
|------|--|---------------------|
| (i) | Whether Shri Ashok Kumar Vyas is entitled for payment of bonus for the period from 1-1-2006 to 2-6-2008? | In Affirmative |
| (ii) | If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. The terms of reference relates to entitlement of bonus to workman. His claim is denied by IInd party denying employer employee relationship.

6. Workman filed affidavit of his evidence. He has stated that he was working with IInd party in extension branch at Rewa from 1-1-06 to 2-6-08. He was paid Rs. 50/- per day. Management failed to cross-examine the workman, his evidence remained unchallenged. IInd party also failed to participate in reference and adduce evidence. Evidence on record proves that workman was continuously working from 1-1-06 to 2-6-08. IInd party Bank can apparently be covered under provisions of Payment of Bonus Act. As per section 8 of Payment of Bonus Act, Ist party is entitled to receive bonus from IInd party for the period 1-1-06 to 2-6-08. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:—

- (1) The workman Shri Ashok Kumar Vyas is entitled for payment of bonus for the period from 1-1-2006 to 2-6-2008.

- (2) IInd party is directed to accordingly pay amount of bonus to workman within 30 days from the date of notification of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer.

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक आफ इंडिया के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (114/99) प्रकाशित करती है जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं. एल-12012/189/98-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 114/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 02/07/2015.

[No. L-12012/189/98-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/114/99

Shri Ganesh Ram Yadav,
Purani Basti, Gopiya Para,
Raipur.

.... Workman

VERSUS

Regional Manager,
Central Bank of India,
Post Box No. 113, Choubey Colony,
Raipur.

.... Management

AWARD

Passed on this 29th day of May 2015

As per letter dated 22-2/9-3/99 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/189/98-IR (B-II). The dispute under reference relates to:

"Whether the action of the management of Central Bank of India in dismissing Shri Ganesh Ram Yadav, ex-Daftari of Central Bank of India, Durg Branch *w.e.f.* 25-11-93 *vide* Memo No. RO/Personnel/Vigi/93-94/1690 dated 25-11-93 is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was working as peon in IInd party Bank from 19-7-74 to 30-11-81. He worked with devotion on 14-11-81, new branch of the Bank was opened at Durg. Workman was transferred as peon in the new branch. He was working with devotion in Bank till 7-8-91.

3. Workman further submits that his daughter in law has submitted report to Police Station, Raipur alleging dowry demands. The police were repeatedly interrogating him and all family members. He was mentally upset. Because of disturbed mind, he could not work properly. Some infirmity in office work was committed. Explanation was called in the matter by Regional Manager. He explained the circumstances. He was orally warned by authorities. Workman was allowed to work. After transfer of Regional Manager, chargesheet was issued to him on 20-1-93 though the matter was already disposed. The enquiry was not properly conducted as per standing orders. Chargesheet was not issued within 3 days, principles of natural justice were not followed by Enquiry Officer. Without any evidence of misconduct alleged against him punishment of dismissal imposed against workman is illegal. The appeal filed by workman was also decided without proper conciliation. Workman prays for his reinstatement with backwages.

4. IInd party filed Written Statement at Page 5/1 to 5/11 opposing claim of workman. Case of IInd party is that workman was posted as Daftary in Central Bank of India, Durg. He was assigned duty of dispatch department of the Bank. Nature of his duty was to affix postal tickets on ordinary and registered envelopes and take its entry in dispatch register, to deliver those envelope in Post Office obtaining receipt from postal department. That during 5-8-91 to 27-8-91, workman intentionally not dispatched 74 registered envelopes. Those envelopes were related to valuable instruments dispatched to various customers and branch. Those envelopes were not returned back by the workman. On 15-9-91, explanation of workman was called in the matter. On 16-9-91, workman submitted his explanation admitting that all those 74 envelopes were not dispatched in the Post office. The explanation submitted by workman was not found satisfactory. Chargesheet was issued to workman on 20-1-93. The charges against workman related to defalcation of postal funds of Rs. 581/- by not delivering 74 envelopes detailed shown in Para-6 of the Written

Statement. Enquiry Officer was appointed, enquiry was conducted against workman issuing notice. Workman participated in Enquiry Proceedings along with Defence Representative Shri Suresh. The chargesheet was read over and explained to workman on 26-2-93, the documents were got exhibited. On 26-5-93, workman and his Defence Representative appeared and admitted all charges and he recorded confession. It is reiterated that as workman admitted chrges against him, the evidence was not required to be recorded, enquiry was closed. Workman was given opportunity for submitting briefs, workman did not submit his brief. Enquiry Officer submitted report that charges against workman were proved after issuing showcause notice. Disciplinary Authority considering findings of Enquiry Officer, charges against workman are proved. Punishment of dismissal was imposed against workman considering gravity of charges. On such ground, IInd party prays for rejection of claim.

5. As per order dated 2-8-2013, enquiry conducted against workman was found vitiated. Considering pleading on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | | |
|-------|--|--|
| (i) | Whether the charges alleged against workman are proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) | Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (iii) | If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

6. Enquiry conducted against workman is found vitiated. Though case was fixed for evidence on other issues, the Written Statement filed by IInd party finds clear pleading that if enquiry is found vitiated, IInd party be given opportunity to prove misconduct in Court.

7. Workman filed affidavit of his evidence but he was not cross-examined. Management's witness Shri H.P. Dewangan also filed affidavit of evidence on the point of legality of enquiry but he was also not cross-examined. After enquiry conducted against workman is found vitiated, management's witness Shri R.L. Kori filed affidavit of evidence. The evidence of management's witness clearly state that during 5-8-91 to 27-8-91, 74 registered envelopes were not dispatched by workman in the Post office. The postal stamp worth Rs. 581/- were misused. Chargesheet was issued to workman. His further affidavit is devoted on the point that workman has admitted charges against him. That he not dispatched 74 envelope. The enquiry conducted against workman remained absent and failed to cross-examine witness of the management therefore I have no reason to disbelieve evidence of management's witness.

The evidence of management's witness is sufficient to prove the charges alleged against workman, therefore I record my finding in Point No. 1 in Affirmative.

8. Point No. 2—In view of my findings in Point No. 1, charges against workman are proved, that 74 registered envelope were not dispatched by workman, the postal stamp worth Rs. 581/- were misused. Workman had returned back those 74 letters only after his explanation was called by Manager. Affidavit of Management's witness is clear that those 74 envelope contain instructions to the customers and branches. As those envelopes were vital documents relating to the Banking work, proved misconduct on part of workman is of serious nature affecting the Bank work therefore punishment of dismissal cannot be said excessive disproportionate. Therefore no interference is called for. For above reasons, I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

- (1) The action of the management of Central Bank of India in dismissing Shri Ganesh Ram Yadav, ex-Daftari of Central Bank of India, Durg Branch *w.e.f.* 25-11-93 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (136/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं. एल-12012/69/2001-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 136/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 02/07/2015.

[No. L-12012/69/2001-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/136/2001

Shri Yogesh Chattervedi,
S/o Shivdutt Chattervedi,
R/o Mari Mata, Mahal Gaon,
Distt. Gwalior,
Gwalior.

...Workman

VERSUS

Regional Manager,
Central Bank of India,
Regional Office,
A.G. Office Road,
Gwalior,

...Management

AWARD

Passed on this 5th day of June, 2015

As per letter dated 16-23/8/2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/69/2001-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Regional Manager, Central Bank of India, Gwalior in terminating the services of Shri Yogesh Chattervedi S/o Shivdutt Chattervedi *w.e.f.* 11-7-90 is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/5. Case of workman is that he was appointed in Janakganj branch of IInd party as per order dated 26.4.88. He was appointed on daily wages. He worked till 25.6.88. Thereafter he was transferred to Hardipur branch where he worked till 5.12.89. He was posted at Janakganj branch, Gwalior where he worked till July 1990. That he was working as peon/daftary for 247 days. He was called for interview on 14.3.93. He was allotted Roll No. 04. Workman was also called by IInd party to Regional Office Gwalior. He passed written test, workman was asked to produce necessary documents. He deposited documents on 22.9.93. Thereafter he was not informed by the management despite several applications sent by him. His application dated 17.5.96 was not replied. That he had worked on permanent vacant post of peon/daftary. That he acquired status of permanent employee. His services could not be terminated without written order. That workman had completed 240 days continuous service. The persons appointed after him are still in service. IInd party did not follow principles of last come first go. His services are terminated in violation of Section 25-F,G of ID Act. Workman submits that he is unemployed. He prays for reinstatement with backwages.

3. IInd party filed written Statement at Page 11/1 to 11/10 opposing claim of workman. Preliminary objection is raised by IInd party that as per statement of claim, workman had worked for 247 days during 1988 to 1990. He had not continuously worked for 240 days in a calendar year. Therefore reference is not tenable. It is reiterated that workman was not employee of the Bank. He did not work as peon. The reference is vague. The Government should not have referred the dispute. The question of termination of employee arises only when employee is appointed after following recruitment process. Workman was not appointed following recruitment process. His name was not sponsored through Employment Exchange. Workman had not completed 240 days continuous service. The regular peon are working in the Bank. The non-engagement of workman is covered under section 2 (oo) (bb) of ID Act. Workman wants back door entry in the Bank. All adverse contentions of workman are denied. Workman was working in temporary capacity as per exigencies. It is denied that workman had worked for 247 days as claimed by him. The casual labour does not get right of absorption as permanent employee. In additional pleadings, IInd party submits that Madanmohan Kushwah and 7 others filed Writ petition before Gwalior Bench of MP High Court challenging recruitment test. Hon'ble High Court refused to grant interim relief. The interview was conducted, result of successful candidates was declared. Those successful candidates were absorbed in service. As workman was never engaged, his claim is not justified. There is no question of termination of his service.

4. Workman submitted rejoinder at Page 13/1 to 13/7 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | | |
|------|--|--|
| (i) | Whether the action of the management of Regional Manager, Central Bank of India, Gwalior in terminating the services Shri Yogesh Chaturvedi S/o Shivdutt Chaturvedi w.e.f. 11.7.90 is justified? | Termination of services of workman by IInd party is not established. |
| (ii) | If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F, G of ID Act. Workman reiterates that he was continuously working from April 88 to July 1990 for more than 240 days during a calendar year.

7. Workman filed affidavit of his evidence stating that he worked at Janaganj branch, Laskar Gwalior from 26.4.80 to 26.6.86. Then he was transferred to Janaganj where he worked till 1990. He was called for written test on 14.3.93

vide Roll No. 04. He was called for interview on 24.9.93. He appeared for test as well as oral interview but nothing was heard from the management. That he acquired status of permanent employee. His services are terminated without notice, no retrenchment compensation was paid. Principles of last come first go was not followed. In his cross-examination, workman says he had appeared for test alongwith substaff. He was called for interview. He did not receive any letter about the result. He was told by the interviewers that he passed the test. Prior to that he was called for test, he worked for 60 days in Janaganj branch Gwalior. He was paid wages at the rate of daily wages. He has not produced any certificate about working days.

8. The document produced by workman Exhibit W-1 shows working days of workman 24 each in August 88 & Sept. 88, 23 days in October 88, 22 days & 4 days etc total 90 days. In Exhibit W-2, working days of workman from 10.5.90 to 10.7.90 are shown 51 days. Exhibit W-3 is the interview call issued to workman, Exhibit W-4 is letter given by Regional office calling formation about the casual employees working during 1.1.1982 to 24.12.1990. Exhibit W-5 is call letter issued to workman. Exhibit W-6 is application submitted by workman to ALC, the documents discussed above does not show workman had completed 240 days continuous service. Though workman is claiming that he had acquired temporary status, the document Exhibit W-7 produced by him Clause 3(1) provides-temporary employees should have put in 240 days temporary service in continuous period of 12 months after 1.1.1982 to 31.12.1990 will be considered for absorption. Evidence adduced by workman is not cogent that he completed 240 days continuous service during 1988 to 1990 therefore claim of workman for absorption is not established. Rather his claim for absorption is beyond the terms of reference. The terms of reference relates to legality of termination of his service. As evidence adduced by workman does not establish that he completed 240 days continuous service, workman is not entitled to protection under Section 25-F of ID Act. Evidence of management's witness Ashwini Kumar Arora is on the point that workman not completed 240 days continuous service. The workman was engaged as casual labour. Evidence of management's witness remained unchallenged. Workman has failed to establish that he completed 240 days continuous service. He is not entitled to protection under Section 25-F of ID Act. For reasons discussed above, I record my finding in Point No. 1 that termination of service of workman is not established.

9. **Point No.—2** In view of my finding in Point No. 1 that workman has failed to establish illegal termination of his service therefore he is not entitled to any relief. Claim of workman for absorption is beyond terms of reference. Such relief cannot be allowed.

10. In the result, award is passed as under:—

- (1) The termination of services of workman by management is not proved illegal.
- (2) Workman is not entitled to any relief.

Parties to bear their own costs.

R.B. PATLE, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल आई सी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 232/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं एल-17012/39/98-आईआर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 232/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workmen, received by the Central Government on 02.07.2015.

[No. L-17012/39/98-IR(B-II)]
RAVI KUMAR, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/232/99

Shri Anand Swaroop,
S/o Shri K. Sharma,
R/o Sutarpura, Morar,
Gwalior.

..... Workman

VERSUS

Divisional Manager,
LIC of India,
Divisional Office,
Phool Bag, Lashkar,
Gwalior

..... Management

AWARD

Passed on this 4th day of June, 2015

As per letter dated 31-5/11-6/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-17012/39/98/IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Divisional Manager, LIC of India in terminating the Services of Shri Anand Swaroop S/o Kashiprasad *w.e.f.* 25.2.96 is justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/2/ to 2/8. Case of workman is that he was shown as temporary sub staff by IInd party No. 2 from 8-8-95. Infact he was working with IInd party from 1-7-95. He was paid Rs. 1200/- for the month of July, 1995. That for proper working of IInd party No. 1, 2 daily wage employees were engaged. Daily wage employee Gangaram Baghel was relative of Hemant, therefore he was allowed on work. Shri Ganesh Kam Kanojia was relative of Shri G.H. Kanojia-AAO. Shri Balkishan Batham was also relative of Shri Suresh Batham therefore they were engaged on work. That workman was continuously working with IInd party No. 2 workman was paid salary Rs. 920/- for February 1996. Workman has also worked with IInd party from March 1996. He was paid Rs. 185/- towards his wages on 7-3-96. The record of said payment maintained in budget control register. The workman alleged that his name was scored out and name of Shri Jagdish Prasad was recorded with oblique motive for terminating his service.

3. Workman further pleaded that orally his services were terminated from 25-2-96. However Branch Manager Shri B.K. Choudhary had told him to work till 7-3-96. As such it is submitted that workman was working from 1-7-95 till 7-3-96 for total 251 days. He was working on vacant post. In order to absorb son of his friend Naresh Kumar, workman was retrenched. That he completed more than 240 days continuous service from July 95 to 7-3-96. His working period was shown less for terminating services legally. His working days were shown only 202 days with oblique motive to absorb son of Naresh Kumar. His services were terminated without notice, he was not paid retrenchment compensation. Termination of his service is in violation of Section 25 of ID Act.

4. Government of India has issued certain circulars *w.r.t.* absorption of daily wage employee. The circulars were also issued by the authorities time to time. Workman was not given benefit of those circulars. His services were not regularised on completion of 180 days service.

5. Workman filed Writ Petition No. 260/98 before Gwalior bench, MP High Court. It is further alleged that during

conciliation proceeding, ALC, Bhopal had not discussed the facts in reply filed by IInd party dismissing Writ petition 260/98, it was absorbed that the dispute under I.D. Act was tried to be raised and therefore the Writ petition was dismissed. Precisely it is submitted that his services are terminated in violation of Section 25 of ID Act. Workman was not provided employment. After his discontinuation, junior employees are continued. On such ground, workman is praying for his reinstatement with backwages.

6. IInd party filed written submission at Page 11/1 to 11/3 contending dismissal of Writ Petition by Hon'ble High Court. Claim of workman is barred by resjudicata provided under Section 11(iv) of CPC.

7. The detailed Written Statement is filed by IInd party at Page 7/1 to 7/10. IInd party had opposed claim of workman. Preliminary objection is raised. That in view of dismissal of Writ Petition No. 260/98, claim of workman is barred by resjudicata, claim cannot be decided by this Tribunal. IInd party submits that it is corporation established under Section 31 of LIC Act, 1956. As per section 6(1) of the Act, corporation is enjoined to carry on Life Insurance business. The powers provided by Section 6(2) of the Act to its different projects are enumerated. That Section 23(1) of the Act provides that the corporation may employ such number of persons as it thinks fit for the purpose of enabling it to discharge its functions under the Act. As per Section 48, Central Government has power to make rules for carrying the business. Government has amended provisions of staff regulations, the amendment in regulation in 1981. Regulations are statutory rules but have over-riding effect on ID Act, 1947. That staff regulation 8 provides that Managing Director, Executive Director, Zonal Manager, Divisional Manager may employ staff of Class III, IV categories on temporary basis. Verbatim of those regulations are reproduced. In exercise of powers under Section 23 of LIC Act, the Corporation has recruited number of persons following the rules of appointment and procedure. Rules supersede the recruitment instructions 1979 which were in operation in 1993. By amendment, IInd party has pleaded that rules and regulations made under LIC Act, 1956 have over-riding effect over provisions of ID Act. In view of LIC Staff Regulations 1960, service conditions of employees of LIC are covered. The Tribunal has no jurisdiction to decide the reference.

8. On merit, IInd party in its Written Statement engagement of workman is not disputed. It is submitted that workman engaged by Branch Manager Shri G.P. Choudhary was not authorized by Sr. Divisional Manager for appointment of temporary Staff. Workman was engaged as daily wage for 69 days during July 1995 to October 95. It is denied that Shri H.P. Kanojia, Suresh Batham and Gangaram Baghel were appointed being relative of other officials. It is submitted that they were appointed following the prescribed procedure as per rules. IInd party had denied that workman had continued to work in March,

1996. Payment of Rs. 185/- to workman is denied. That amount of Rs 185/- was paid to one Keshav Singh on 7-3-96. IInd party has denied Ist party workman had completed 240 days continuous service. Branch Manager Shri G.K. Choudhary had no authority to engage workman. Engagement of workman was without authority. Claim of Ist party workman would amount to back door entry. Mere engagement of workman does not confer him substantive right for reinstatement. Workman is not entitled to retrenchment compensation neither workman is entitled for absorption or regularization. It is reiterated that Writ Petition No. 260/38 was dismissed by Hon'ble High Court and therefore principles of resjudicata is applicable. Claim of workman is not tenable. On such ground, IInd party submits that workman is not entitled to any relief.

9. Workman submitted rejoinder at Page 29/1 to 29/8 reiterating his contentions in statement of claim. It is denied that the Tribunal has no jurisdiction to decide the reference. That IInd party has admitted engagement of workman on daily wages. It is denied that claim of workman is barred by res-judicata.

10. Considering pleadings on record, my predecessor framed issues on 2-7-2001 give below:—

- (i) Whether workman was employed temporary as sub staff by management?
- (ii) Whether services of workman were illegally terminated by management from 25-2-96?
- (iii) Whether the workman is entitled to reinstatement with backwages?

11. Issues framed above not cover entire controversy between parties, therefore points which arise for my consideration and determination are as under. My findings are recorded against each of them from the reasons as below:—

- | | | |
|-------|---|---------------------|
| (i) | Whether this Tribunal has jurisdiction to decide the matter under reference? | In Affirmative |
| (ii) | Whether claim of workman is barred by resjudicata in view of decision in Writ petition No. 260/98? | In Negative |
| (iii) | Whether it is proved that services of workman are illegally terminated by management of IInd party from 5-2-96? | In Affirmative |
| (iv) | Whether workman is entitled for reinstatement with backwages? | In Negative |
| (iv) | If so, to what relief the workman is entitled to?" | As per final order. |

REASONS

12. Point No. 1, 2 Ist party workman is challenging termination of his service for violation of section 25 of ID

Act. That Junior employees are regularised, his services are terminated with oblique motive to absorb the relative of the staff members. IInd party has raised objection to the jurisdiction of this Tribunal barred by resjudicata in view of dismissal of Writ petition 260/98 by Gwalior bench of High Court. Copy of order of dismissal of Writ Petition 260/98 is produced. While dismissing the Writ Petition, it is observed that there is nothing on record to indicate that the petitioner has right to hold the post. Moreover it is indicated by the petitioner in Para 5(vi) of the petition he is pursuing the remedy under the provisions of the ID Act. Considering the facts and circumstances as brought on record, no justifiable ground is made out for any interference by this Court at this stage while exercising the extra ordinary jurisdiction envisaged under Article 226 of the constitution of India. The petition was dismissed. The Hon'ble High Court did not decide the claim of workman termination of his service in violation of Section 25 of ID Act. Writ Petition was dismissed as workman was pursuing remedy under provisions of ID Act. As the matter was not decided on merit by Hon'ble High Court, the provisions of Section 11(iv) CPC would not be applicable in the matter. This dismissal of Writ Petition by Hon'ble High Court therefore cannot bar remedy under ID Act. The contentions raised in that regard by IInd party cannot be accepted.

13. With respect to objection to jurisdiction of this Tribunal, preliminary objection as raised. My predecessor has passed order that the point shall be decided alongwith other issues. The order dated 2-7-01 passed by my predecessor is clear that claim of workman is not barred by resjudicata. Said order was not challenged by IInd party and as such received finality. The objection raised by IInd party on the jurisdiction of this Tribunal was raised by amendment in para 10-A, 10-B. That the rules and regulations framed under Section 48(2)(cc) overrides the provisions of ID Act. I may make it clear that order of reference made by Govt. of India was not challenged by IInd party therefore dispute under reference needs to be decided by this Tribunal. Learned counsel for IInd party Mr. Amit Bharti did not argue w.r.t. point of jurisdiction of this Tribunal. The ratio referred by IInd party in amendment Para 10-A of Written Statement is also not produced by counsel for IInd party for my perusal. Learned counsel for IInd party has not brought to my notice any statutory rules regulations of ratio on the point. I do not find substance in contentions raised by IInd party about bar of jurisdiction of this Tribunal. For above reasons, I record my finding in Point No. 1 in Affirmative and Point No. 2 in Negative.

14. **Point No. 3-** Before dealing with evidence of parties, I may also mention that counsel for workman submitted details of the proceedings time to time. It was emphasized that application submitted under Section 65 read with Rule 114 of Evidence Act were pending. In application for production of original documents, no order was passed.

After this preliminary issue was framed, the applications filed by counsel for Ist party were decided by order dated 29-4-2015. The applications were rejected. It would not be appropriate to discuss same point again.

15. The substance of the contentions of workman is he completed more than 240 days continuous service. His services were terminated without notice, not paying retrenchment compensation. The termination of his service is in violation of Section 25-F of ID Act. That the junior employees were regularized. Workman was not provided employment. The terms of reference pertains to legality of termination of services of workman from 25-2-96. Workman however pleaded that he was working with IInd party from 1-7-95 to 7-3-96. Evidence and documents relied by parties needs to be discussed.

16. In his affidavit of evidence workman says he was engaged by IInd party from 1-7-95. He was paid pay of Rs. 1200. His services were treated as temporary sub staff by Branch Manager Shri G.K. Choudhary. His affidavit is devoted about the dispute raised before Conciliation Officer and dismissal of Writ petition 260/98. That he worked for 251 days. His services were not regularised as per regulation of 1960. That IInd party had admitted working of 69 days of Ist party workman. Affidavit of evidence of workman is further devoted about categories of the employees as per Regulation of 1960 and the ratio held in different cases by the Apex Court. In his cross-examination, workman says that IInd party LIC is undertaking of the Government. It functions as per regulations rules. He claims ignorance about rules of temporary recruitment. That before his appointment, no public advertisement was issued. He not appeared for Written Test, only he was interviewed. Any other persons were not called for interview along with him. That he was working as class IV employee. He was paid Rs. 40/- per day for working days. His monthly pay was not fixed. He was paid wages for actual working days. He was submitting application for payments. He claims ignorance whether vouchers for payments were prepared by OA department. From evidence of workman in his cross-examination, documents Exhibit M-1, 1-a to f, M-2 and M-2 a to h, M-3 are admitted. Workman in his further cross denies that he worked only for 69 days and not completed 240 days continuous service. Workman further says on 12.5.96, he had appeared for the examination. Workman corrected that he was not allowed to participate in the examination, only he received admit card. Workman claims ignorance whether Gangaram, H.P. Kanojia, and Suresh Batham had passed examination.

17. The documents Exhibit M-1 shows workman working with IInd party from 10.7.95 to 31.7.99. M-1(a) shows same working period of workman, he was paid wages Rs. 40/- per day. Amount of Rs. 170 was claimed. Exhibit M-1(b) shows workman working from 1.8.95 to 4.8.95. The amount of Rs. 160/- was paid to him. Exhibit 1 (d) shows working

period of workman from 4.9.95 to 9.9.95. Exhibit M-1(e) shows payment of Rs. 240/- to workman for period 11.9.95 to 16.9.95. Exhibit M-1(f) shows payment of wages for the period 5-9-95 to 29.9.95. Exhibit M-1(g) shows payment to workman for the period 4.10.95 to 14.10.95. Exhibit M-2 shows payment of Rs. 510/- to workman on 31.7.95. M-2(a) shows payment of Rs. 170 to Ist party on 17.8.05 for period of 17 days. Exhibit M-2(b) shows payment of Rs. 160/- for the period 1.8.95 to 4.8.95 for 4 days. Exhibit M-2(c) shows payment of Rs. 120/- on 14.8.95 for 4 days. M-2(c) shows payment of Rs. 120/- on 14.8.95. Exhibit M-2(d) shows payment of Rs. 240/- to workman on 9.9.05. M-2(e) shows payment of Rs. 240/- to workman on 16.9.95. Exhibit M-2(e) shows payment of Rs. 200 for 5 days to workman on 16.10.95 for period of 10 days. Exhibit M-2(h) shows payment of Rs. 480/- to workman for 12 days. Exhibit M-3 shows payment of Rs. 18/- to workman towards payment for TA. Workman has produced bills vouchers and applications regarding payment made to him. IInd party had denied those documents. Payments under voucher dated 2.1.96 of Rs. 70/- is admitted by IInd party.

18. Zerox copies of entries in budget control register are produced. The register itself shows payment made to workman on 7.3.96.

19. The evidence of management's witness Shri P.P. Arya is on the point that workman had worked for 69 days from July 95 to October 95, thereafter workman did not work in IInd party. That H.P. Kanojia, Suresh Batham and Gangaram Baghel were regularly appointed following the rules. Workman had not completed 240 days continuous service. From evidence of management's witness documents Exhibit M-4, M-5 were admitted in evidence. Management's witness in his cross-examination says during 1995-96, he was not working as higher grade Assistant. Said post was of clerical grade. During 1995-96, Shri R.K. Dixit was posted in Bhind branch Gwalior Division. Management's witness was unable to say whether workman participated in selection process. He also claims ignorance whether workman was not allowed to appear in the examination. Shri H.P. Kanojia, Suresh Batham and Gangaram Baghel were appointed on 12-5-96. As per pleadings and evidence of workman, his services were terminated from 7-3-96. The appointment of above persons is subsequent to termination of Ist party workman. The cross-examination of management's witness is devoted about budget control. The entries of payments are recorded in said register. That page 70 of budget control register is torn. He denies that said page was torn after workman was rejected. Management's witness admits that Shri G.K. Choudhary Manager was working at the relevant time. Management's witness claimed ignorance about his predecessors working in the Bank. The suggestion is denied that workman had worked for 249 days in the branch. He claims ignorance whether employee completed 180 days service is entitled to regularization as per the circular. Any document in name of Keshav Singh was recorded at Page

No. 9. That he had not seen payment voucher for 1996 before filing affidavit of his evidence. That Page No. 3, 18, 48, 60 & 95 of Account Register were torn. He claimed ignorance since what time those documents were not in the register.

20. Learned counsel for workman Shri Sharma pointed my attention to application for production of document was submitted by workman on 7-4-2011 and reply was not filed or any order was not passed on such application. It is further submitted that adverse inference be drawn against IInd party. I am not convinced with the arguments advanced by learned counsel. When application was filed for production of documents and it was not pressed by workman till the right for recording evidence and case was fixed for argument. In the circumstances adverse inference against IInd party would not be justified. IInd party has not produced document about attendance of Ist party workman. The evidence of workman is corroborated by number of payment vouchers discussed above. The evidence of management's witness that workman had completed only 69 days working cannot be accepted in view of payment vouchers produced on record. Those documents are admitted by IInd party.

21. Learned counsel for Ist party Shri Sharma submitted written notes of argument along with bunch of citations.

In case of Sudarshan Rajpoot *versus* Uttar Pradesh State Road Transport Corporation reported in 2015(1) SSC (:&S) 451. Their Lordship held that workman was working on permanent basis was not employed by respondent corporation. Extracting work of permanent nature continuously for more than three years on contract basis is statutorily prohibited and hence impermissible, same amounts to unfair labour practice and is punishable.

In present case workman was working with IInd party from 1-7-95 to 7-3-96. The facts are not comparable, ratio held in case cannot be applied to present case at hand.

The workman has pleaded that circulars are issued by authority of IInd party for absorbing employee completing 180 days, such circulars are not produced on record. Besides above, the terms of reference do not pertain to claim for regularization of workman. It relates only to the legality of termination of service therefore ratio held in above case as well in case of Umrala Gram Panchayat *versus* Secretary, Municipal Employees Union and others reported in 2015-LLR-449 cannot be applied to present case.

Ratio held in case of Devinder Singh *versus* Municipal Council Sanaur reported in 2011(4) MPLJ-62 relied by counsel for workman relate to workman covered under Section 2(s) of ID Act. Their Lordship held the source of employment, the method of recruitment, the terms and conditions of employment, the quantum of wages and the mode of payment are not at all relevant for deciding whether or not a person is a workman.

In present case, IInd party has not specifically pleaded that Ist party is not covered as workman under Section 2(s) of ID Act. The Parties are in serious dispute about completion of 240 days service by workman and Violation of Section 25-F of ID Act. Therefore ratio held in above case cannot be applied to case at hand.

In case of Anoop Sharma *versus* Executive Engineer reported in 2014(4) MPLJ-39. Their Lordship dealing with termination of service of employee is by way of retrenchment held non compliance of conditions precedent action of the employer is nullity and the employee is entitled to continue in employment.

In present case, evidence of workman is corroborated by several documents that he was working from 1-7-95 to 7-3-97.

22. IInd party has not produced Attendance Register to show that workman worked only for 69 days. The payment voucher discussed above corroborates evidence of workman that he was working more than 240 days.

Learned counsel for Ist party has also relied on ratio held in—

Case of Sonapat Cooperative Sugar Mills Ltd. *versus* Rakesh Kumar. The ratio held in above case pertains to fixed term employment and application under Section 2(oo)(bb) and Section 25-F of ID Act. The case of IInd party is not that workman was engaged for specific period on fraud committed by other side.

The facts of present case are not comparable and cannot be applied to present case.

In case of Moolchand *versus* Radha Sharan and another reported in 2006-MPLJ-601, the scope of order with Rule 2 was considered by his Lordship and it was held that the pleadings cannot take the place of proof until it is not proved by reliance evidence by examining the witnesses.

In present case, both parties have lead evidence and therefore question involved is about appreciating of evidence and corroboration of evidence of the parties. Ratio held in the case cannot be applied to present case.

In case of MP Textbooks Corporation, Bhopal *versus* Anil Jethli and another reported in 2008(1) MPJR-36. His Lordship dealing with Section 2(oo) 25 B of ID Act. The workman proved that he worked for 240 days management did not take the plea that the appointment was on contract basis. Management did not produced ledger or attendance register. Employer took the plea that the work of employee was unsatisfactory. His Lordship held initial onus on the workman of having worked for 240 days is discharged. Management did not prove to contrary.

In present case, evidence of workman is supported by payment voucher and document discussed above shows that he worked more than 240 days continuous service. The evidence of management's witness is not worth of

place reliance. Management's witness has no personal knowledge. Documents are not produced by management about attendance and working days of workman. For above reasons, ratio held in case of Commissioner, Municipal Corporation, Katni *versus* Laxmi Narayan Jaiswal and others cannot be applied as pleadings and evidence are not comparable.

23. From evidence and documents discussed above, it is clear that though workman completed 240 days continuous service, his services were terminated without notice, retrenchment compensation was not paid to him. Termination of workman is in violation of Section 25-F of ID Act. So far as regularization of Gangaram and two others, other junior employees, claim of workman is not for regularization. Those employees were appointed following selection process. The candidates declared successful on 28-5-96 is produced at Exhibit M-4. The list of names of successful candidates is produced at Exhibit M-5. Name of workman is not appearing in the list. Workman cannot be compared with those selected candidates. To sum up it is proved that termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 3 in Affirmative.

24. Point No. 4, 5. In view of my finding in Point No. 3, termination of services of workman is illegal for violation of Section 25-F of ID Act, question arises whether workman is entitled for reinstatement for backwages. The evidence of workman is clear from 1-7-95 to 7-3-96. Payment vouchers shows workman was engaged on wages Rs. 40/- per day. Workman had not appeared in examination. He was not selected following the rules.

25. Learned counsel for Ist party Shri Sharma argues that termination of workman is illegal for violation of Section 25-F. Workman be allowed reinstatement with backwages. In support of his argument, reliance is placed on ratio held in—

In case of Harjinder Singh and Punjab State Warehousing Corporation reported in 2010(124) FLR 700. The facts of above cited cases are different. The appellant in said case was employer in service of Punjab State Warehousing Corporation from 5-3-86 as work charge Motor Man *w.e.f.* 5-3-1986. After 7 months further orders were issued to him to work as Work Munshi in pay scale 350-525, 400-600, he was continued in service till 5-7-88. The services were terminated by issuing one months notice.

In view of the facts in above cited case are not comparable, the ratio cannot be applied to case at hand.

26. Learned counsel for IInd party Mr. Amitabh Bharti relies on ratio held in.—

Case of Hari Nandan Prasad *versus* Management of FCI and another reported in AIR 2014-SC-1848. Their Lordship considering workman worked barely for 3 years service terminated in distant past. Termination found to be faulty

on technical ground of non-compliance with Section 25-F. Workman was not entitled to relief of reinstatement.

Considering the facts and evidence, workman worked for about one year, compensation Rs. 50,000 would be appropriate. Accordingly I record my finding in Point No. 3.

In the result, award is passed as under:—

- (1) The action of the management of Divisional Manager, LIC of India in terminating the services of Shri Anand Swaroop S/o Kashiprasad *w.e.f.* 25-2-96 is illegal for violation of Section 25-F of ID Act.
- (2) IInd party is directed to pay compensation Rs. 50,000/- to the workman within 30 days from the date of notification of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1360.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पटना के पंचाट [02 (C) of 2014] को प्रकाशित करती है जो केन्द्रीय सरकार को 02.07.2015 को प्राप्त हुआ था।

[सं एल-39025/01/2010-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. 02(C) of 2014] of the Indus. Tribunal-cum-Labour Court, Patna as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 02.07.2015.

[No. L-39025/01/2010-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA.

INDUSTRIAL DISPUTE CASE NO.:—02 (C) OF 2014

Between the management of Zonal Manager, UCO Bank Zonal Office, S.K. Trafdar Road, Near Koliaghat Adampur, Bhagalpur and their workman Shri Dablu Kumar, S/o-Shri Banke Behari Pandey, Vill. & P.O.- Baijani,

P.S.- Jagdishpur, Dist.- Bhagalpur, through the State Secretary, UCO Bank Employees Association, Bihar State Committee, 2nd Floor, Saboo Complex, P.O.-Hotel Republic, Exhibition Road, Patna-800001.

For the management : Shri Ashutosh Nath Acharya, Senior Manager, UCO Bank, Bhagalpur.

For the workman : Shri B. Prasad, State Secretary, UCO Bank Employees Association, 2nd Floor, Saboo Complex, P.O.-Hotel Republic Exhibition Road, Patna-800001.

Present : Bipin Dutta Pathak
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna dated 22nd June, 2015

This application has been filed under the provisions of Section-2A (1) & (2) of the Industrial Disputes (Amendment) Act, 2010. This case has been filed by the workman Shri Dablu Kumar against the management of UCO Bank, Zonal Office, Bhagalpur for seeking relief of wrongful termination of the workman who was part time sweeper in the bank.

2. Case was pending for the evidence of the management. In this case both parties had appeared and written statement was also filed on behalf of the management bank.

3. Today attendance has been filed on behalf of the management and the workman through State Secretary, UCO Bank Employees Association, namely Sri B. Prasad, representative of the union.

4. Petition has been filed on behalf of the workman stating therein that he was working temporarily in UCO Bank, Zonal Office, Bhagalpur as sweeper. He was removed from the service and as such he has filed this case before this tribunal. He without any pressure wants to withdraw this case. Now he has no dispute or complaint against the bank.

5. On the point of compromise W.W-1 Dablu Kumar has been examined today and in his evidence he has stated that he was working since 1st September, 2007 in UCO Bank Branch Baijani but he was removed from the service after 09.10.2013. Now he has been again appointed and he is working in the bank since 04.02.2015 and posted at Khaisar Branch, Distt. - Banka.

6. He further stated that after removal from the service he filed Industrial Dispute Case No. 02(C) of 2014 and he withdraw of this case without any pressure. Now he no complaint or dispute from the bank. In cross-examination

he has stated that he has no complaint and dispute against the bank and he requested to pass "No Dispute Award".

7. Since the workman wants to pass "No Dispute Award" and he has no complaint or dispute against the bank and he has again been appointed so "No Dispute Award" is passed in this case.

This is my award accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अधीक्षक, डाकघर (हैड ऑफिस), भारतीय डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय जोधपुर के पंचाट (संदर्भ संख्या 04/09) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं एल-40012/227/2003-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (I.D. No. 04/09) of the Industrial Tribunal-Cum-Labour Court, Jodhpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintendent of Post Office and their workman, which was received by the Central Government on 30/06/2015.

[No. L-40012/227/2003-IR(DU)]

P. K. VENUGOPAL, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठीसीन अधिकारी : श्री महेन्द्र कुमार सिंहल,
आर०एच०जे०एस०

औ० विवाद (केन्द्रीय) प्र०सं० : 04/2009

- दिनेशसिंह राव पुत्र श्री नाथुलाल राव, जाति राव, उम्र 33 वर्ष, निवासी मुकाम पोस्ट बाकरा, ग्राम वाया बागरा, जिला जालोर (राज०) वर्तमान पता जैन पार्श्वनाथ, मंदिर गोडीजी के पास, गोडीजी, जालोर (राज०)।

..... प्रार्थी/श्रमिक

बनाम

- अधीक्षक, डाक घर (हैड ऑफिस)
भारतीय डाक विभाग, सिरौही मण्डल, सिरौही
(राज०)।

..... अप्रार्थी/नियोजक

उपस्थित:-

- प्रार्थी के प्रतिनिधि : श्री गिरीश सांखला,
- अप्रार्थी के प्रतिनिधि : श्री विनय जैन

अधिनिर्णय

दिनांक : 08.12.2014

- भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल/40012/227/2003-आई०आर० (डी०यू०) नई दिल्ली, दिनांक 29.01.2009 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:-

"Whether the action of the management of Superintendent of Post Office, Sirohi Mandal, Sirohi (Rajasthan) in terminating the services of Shri Dinesh Singh Rao w.e.f. 26.03.2000 is legal and justified? If not, what relief the workman is entitled to?"

- प्रार्थी ने अपने मांगपत्र में यह उल्लेख किया है कि उसकी नियुक्ति अ०वि० शाखा डाक पाल के पद पर अप्रार्थी नियोजक के अधीन ब्रांच पोस्ट मास्टर पांथेरी (धानासा) जिला जालोर के अधीन दिनांक 05.07.1999 को ज्ञापन संख्या एच/पी एफ 310/II सिरौही दिनांक 08.06.1999 के अंतर्गत प्रदान की गई। मासिक वेतन 1280 रुपये तथा मंहगाई भत्ता प्रतिमाह के आधार पर कुल 1857 रुपये पर नियुक्ति की गई। प्रार्थी ने अप्रार्थी के समक्ष दिनांक 25.06.1999 को प्रार्थनापत्र प्रस्तुत किया, जिस पर अप्रार्थी द्वारा समुचित पाये जाने पर प्रार्थी को उक्त नियुक्ति प्रदान की गई।

- प्रार्थी ने उल्लेख किया है कि उसने अप्रार्थी के अधीन दिनांक 05.07.1999 से दिनांक 26.03.2000 तक सेवाएं प्रदान कीं, उसे अ. वि. शाखा डाक पाल के पद पर नियुक्ति दी गई थी, लेकिन अप्रार्थी द्वारा उससे लिपिकीय कार्य के साथ-साथ चतुर्थ श्रेणी कर्मचारी का कार्य भी करवाया गया। उसका कार्य संतोषपूर्ण होने के बावजूद भी अप्रार्थी नियोजक द्वारा प्रार्थी के मौखिक आदेश से दिनांक 26.03.2000 को सेवाएं समाप्त कर दीं। प्रार्थी ने अपने कार्य वर्ष में 240 दिवस से अधिक दिवस तक अप्रार्थी नियोजक के अधीन कार्य किया है, लेकिन उसकी सेवा पृथकता से पूर्व उसे किसी प्रकार का कोई लिखित नोटिस, आरोपपत्र नहीं दिया गया, न ही कोई जांच की गई, न ही कोई नोटिस अथवा चेतावनी पत्र दिया गया। सेवा समाप्ति से पूर्व औद्योगिक विवाद अधिनियम 1947 के प्रावधानों के अन्तर्गत एक माह का नोटिस, नोटिस के बदले वेतन अथवा कोई मुआवजा राशि का भी भुगतान नहीं किया गया। प्रार्थी के अनुसार उसकी सेवा समाप्ति के पश्चात् अप्रार्थी नियोजक द्वारा कई नये श्रमिकों की भर्तियां की गईं, जो अनफेयर लेबर प्रेक्टिस की तारीफ में आता हैं।

इस प्रकार अप्रार्थी नियोजक द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 25एफ, 25जी तथा 25एच के प्रावधानों का उल्लंघन किया गया है। उसे अप्रार्थी आश्वासन देते रहे कि उसकी पत्रावली भारत सरकार न्यू देहली को प्रेषित की गई है तथा उच्च अधिकारियों का आदेश आते ही उसे पुनः सेवा में रख लिया जायेगा। अन्त में प्रार्थी को अप्रार्थी द्वारा पुनः सेवा में नहीं लेने पर प्रार्थी द्वारा श्रम विवाद केन्द्रीय श्रम आयुक्त, अजमेर के समक्ष दिनांक 22.05.2003 को प्रेषित किया गया। सक्षम सरकार ने प्रार्थी के प्रकरण में रेफरेंस करने से इन्कार कर दिया, जिस पर प्रार्थी द्वारा एक रिट याचिका संख्या 3580/2004 दिनेश सिंह राव बनाव भारत सरकार तथा अन्य माननीय राजस्थान उच्च न्यायालय, जोधपुर में प्रस्तुत की, जिसके आदेश दिनांक 07.01.2009 के द्वारा उक्त रिट याचिका को स्वीकार करते हुए समक्ष सरकार को प्रार्थी के प्रकरण का पुनः अवलोकन कर तीन माह के भीतर-भीतर रेफरेंस श्रम न्यायालय को प्रेषित करने का आदेश पारित किया, जिस पर सक्षम सरकार द्वारा उक्त रेफरेंस अजमेर श्रम न्यायालय को प्रेषित कर दिया गया। प्रार्थी का प्रकरण श्रम न्यायालय, जोधपुर के क्षेत्राधिकार में आता है। उसके निवेदन पर सक्षम सरकार ने दिनांक 06.05.2009 को उक्त श्रम विवाद श्रम न्यायालय, अजमेर से जोधपुर स्थानान्तरित करने का आदेश पारित किया। प्रार्थी सेवा समाप्ति से आज तक बेरोजगार है, उसके जीविकोपार्जन का कोई साधन नहीं है। प्रार्थी के साथ अप्रार्थी द्वारा श्रम शोषण किया गया है। उक्त आधारों पर प्रार्थी ने यह प्रार्थना की है कि उसे सेवा में पुनः स्थापित किया जावे, उसकी सेवाएं लगातार मानी जावें व पिछला समस्त बकाया वेतन सेवा समाप्ति से दिलाया जावे।

4. पत्रावली श्रम न्यायालय अजमेर से प्राप्त होने पर दोनों पक्षों को नोटिस जारी किये गये। दिनांक 24.1.2009 को अप्रार्थी की ओर से अधिवक्ता श्री विजय जैन ने वकालतनामा पेश किया। दिनांक 02.11.2010 को जवाब प्रस्तुत नहीं किये जाने पर अप्रार्थी का जवाब पेश किये जाने का अधिकार खत्म किया गया व दिनांक 24.11.2011 को अप्रार्थी की ओर से कोई उपस्थित नहीं होने से अप्रार्थी नियोजक के विरुद्ध कार्यवाही एक तरफा की गई, दिनांक 21.12.2011 को अधिकरण द्वारा अधिनिर्णय पारित किया गया।

5. माननीय राजस्थान उच्च न्यायालय द्वारा एसबी सिविल रिट संख्या 11699/2013 की दिनांक 06.01.2014 के आदेश के अनुसरण में अप्रार्थी पक्ष व प्रार्थी पक्ष की बहस अन्तिम सुनी गई।

6. दोनों पक्षों को सुना गया, पत्रावली का ध्यानपूर्वक अवलोकन किया गया। विद्वान अधिवक्ता प्रार्थी का बहस में कथन है कि प्रार्थी पक्ष द्वारा पेश प्रार्थी के शपथपत्र व दस्तावेजात एनेक्चर - 1 लगायत एनेक्चर 12 से यह साबित करने में सफल रहा है कि प्रार्थी को अप्रार्थी विभाग ने दिनांक 05.07.99 को अवि० शाखा में डाकपाल के पद पर नियुक्ति दी। प्रार्थी ने वहां निरन्तर दिनांक 26.03.2000 तक कार्य किया। अप्रार्थी ने अप्रार्थी की सेवा दिनांक 26.03.2000 को समाप्त कर दी। इस प्रकार प्रार्थी ने 12 कलेण्डर माहों में 240 दिन से अधिक दिन कार्य किया। अप्रार्थी ने प्रार्थी की सेवा समाप्ति से पूर्व धारा 25फ औद्योगिक विवाद अधिनियम, 1947 के प्रावधानों की पालना नहीं की, एक माह का नोटिस नहीं दिया, वेतन तथा छंटनी का मुआवजा अदा नहीं किया, प्रार्थी को अनुचित तरीके से सेवा से हटाया, प्रार्थी की सेवा समाप्ति अनुचित व अवैध है।

7. अप्रार्थी पक्ष का कथन है कि प्रार्थी को प्रोविजनल नियुक्ति दी गई थी, जो दिनांक 08.07.1999 से 31.01.2000 तक दी गई थी। प्रोविजनल नियुक्ति सिर्फ नियमित नियुक्ति होने या कम समय तक के लिए है तथा किसी भी समय बिना पूर्व नोटिस दिये हटाया जा सकता है। प्रार्थी नियुक्ति का दावा नहीं कर सकता।

8. प्रार्थी ने साक्ष्य में शपथपत्र पेश किया, जिसमें मांगपत्र के लक्ष्यों को दोहराया गया। शपथपत्र पर जिरह नहीं की गई है, इसलिए प्रार्थी के शपथपत्र के कथन अखण्डित रहे हैं। रेफरेंस में अधिकरण को यह तय करना है कि दिनेशसिंह राव की दिनांक 26.03.2000 को की गई सेवा समाप्ति विधिनुसार व वैध है?

9. इस संबंध में अप्रार्थी पक्ष द्वारा यह कहा गया है कि दिनेशसिंह को प्रोविजनल नियुक्ति दी गई थी जो दिनांक 08.07.1999 से 31.01.2000 तक दी गई थी। हालांकि अप्रार्थी पक्ष द्वारा न तो जवाब पेश किया गया, न ही साक्ष्य पेश की गई है, परन्तु एनेक्चर 4 जो अप्रार्थी पक्ष द्वारा सहायक श्रम आयुक्त को भेजा गया था, उसके अनुसार प्रार्थी को दिनांक 08.07.1999 से 31.01.2000 तक प्रोविजनल नियुक्त किया गया था। उक्त तिथि से स्पष्ट है कि उक्त अवधि 240 दिन की नहीं होती है, जबकि रेफरेंस से यह स्पष्ट है कि दिनांक 26.03.2000 को प्रार्थी को सेवा से हटाया गया था। दिनांक 08.7.1999 से 26.03.2000 तक की अवधि 240 दिन से ज्यादा होती है। प्रार्थी ने अपने मांगपत्र व साक्ष्य के शपथपत्र में स्पष्ट बताया है कि उसने 240 दिन से ज्यादा एक कलेण्डर वर्ष में लगातार नौकरी की थी।

10. यहां यह उल्लेख करना आवश्यक है कि प्रार्थी को दिनांक 08.07.1999 से 31.01.2000 तक प्राविजनल नियुक्ति देने के बाद भी अर्थात् दिनांक 31.01.2000 के बाद 26.03.2000 तक नौकरी में रखा गया। प्रोविजनल नियुक्त व्यक्ति को निर्धारित नियुक्ति के दौरान या समयावधि समाप्त होने पर बिना नोटिस के हटाया जा सकता है। परन्तु इस प्रकरण में प्रोविजनल नियुक्ति की समयावधि के बाद दो माह से अधिक समय तक प्रार्थी को नहीं हटाया गया, तक तक प्रार्थी ने निरन्तर रूप से 240 दिन से ज्यादा नौकरी कर ली थी।

11. इस प्रकरण की विशेष स्थिति यह भी रही है कि प्रार्थी की शिकायत पर अप्रार्थी पक्ष द्वारा मामले को अधिनिर्णय हेतु मामले को रेफर नहीं किया गया तब प्रार्थी द्वारा माननीय राजस्थान उच्च न्यायालय में सिविल रिट संख्या 3580/2004 दायर की, जिसमें दिनांक 07.01.2009 को माननीय राजस्थान उच्च न्यायालय द्वारा आदेश दिया गया कि प्रार्थी के मामले को पुनः सुना जाए और रेफरेंस करने हेतु उचित निर्णय लिया जावे। जिस पर रेफरेंस किया गया।

12. उपरोक्त विवेचन से प्रार्थी उसकी सेवा की निरन्तरता में सेवा में पुनर्स्थापित किये जाने योग्य है। प्रार्थी की सेवा समाप्त हुए करीब 14 वर्ष से अधिक समय हो चुका है, ऐसी स्थिति में समस्त तथ्यों, परिस्थितियों को देखते हुए प्रार्थी सेवा समाप्ति से सेवा में पुनर्स्थापित किये जाने तक की अवधि के वेतन की 25 प्रतिशत राशि पूर्वभूति के रूप में प्राप्त करने का अधिकारी है।

अधिनिर्णय

13. अतः यह अधिनिर्णित किया जाता है कि:—

- (1) अप्रार्थी नियोजक अधीक्षक, डाक घर भारतीय डाक विभाग, सिरोही मण्डल, सिरोही द्वारा प्रार्थी श्री दिनेशसिंह पुत्र श्री नाथुलाल को दिनांक 26.03.2000 से सेवापृथक करना उचित तथा वैध नहीं है।
- (2) अप्रार्थी नियोजक प्रार्थी श्री दिनेशसिंह पुत्र श्री नाथुलाल को तुरन्त सेवा में पुनर्स्थापित करें। प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित होने तक निरन्तर मानी जायेगी।
- (3) प्रार्थी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित होने तक की अवधि के वेतन की 25 प्रतिशत राशि पूर्वभूति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है।

14. इस अधिनिर्णय को प्रकाशनार्थ भारत सरकार के श्रम मंत्रालय, नई दिल्ली को प्रेषित किया जावे।

15. यह अधिनिर्णय मेरे द्वारा लिखाया जाकर आज दिनांक 08.12.2014 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

महेन्द्र कुमार सिंहल, न्यायाधीश

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय भविष्य निधि आयुक्त के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय जोधपुर के पंचाट (संदर्भ संख्या 02/09) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं एल-42011/10/2009-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 02.09) of the Industrial Tribunal-Cum-Labour Court, Jodhpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Provident Fund Commissioner and their workmen, which was received by the Central Government on 30/06/2015.

[No.L-42011/10/2009-IR(DU)]

P. K. VENUGOPAL, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण

एवं

श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी

: श्री अनूप कुमार सक्सैना,
आर०एच०जे०एस०

औद्योगिक विवाद (केन्द्रीय) संख्या : 02/2009

दी वार्डस प्रेसीडेन्ट,
राजस्थान ट्रेड यूनियन केन्द्र,
जोधपुर

..... प्रार्थी

बनाम

केन्द्रीय भविष्य निधि आयुक्त

..... अप्रार्थी

उपस्थित:

(1) प्रार्थी प्रतिनिधि श्री विजय मेहता।

(2) अप्रार्थी प्रतिनिधि श्री यशवंत मेहता।

अधिनिर्णय

दिनांक : 03.02.2014

भारत सरकार के श्रम विभाग ने अपनी अधिसूचना क्रमांक -42011/10/2009-IR(DU) दिनांक 05/05/2009 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया है :-

"Whether the action of the management of the Central Provident Fund Commissioner, New Delhi/Officer Incharge and Assistant Provident fund Commissioner, Jodhpur in imposing a penalty of reduction of pay by one stage for a period of 4 years without cumulative effect on their workman Shri Jawaharlal vide order dated 21/8/2006 is legal and justified? If not, what relief the workman entitled to".

2. प्रार्थी की ओर से मांगपत्र प्रस्तुत करते हुए यह निवेदन किया गया है कि प्रार्थी को आरोप पत्र संख्या 95 दिनांक 29.04.99 कार्यालय आदेश दिनांक 07.12.2000 के माध्यम से 21 माह पश्चात् यह आरोप लगाते हुए दिया गया कि प्रार्थी ने स्थानान्तरण आदेश दिनांक 24.09.1998 की पालना नहीं की तथा निलम्बन आदेश दिनांक 19.11.1998 को लेने से इंकार कर दिया। इसके अलावा प्रार्थी ने केन्द्रीय प्रशासनिक अधिकरण के निर्णय की पालना नहीं की, जबकि प्रार्थी ने स्थानान्तरण आदेश की पालना करते हुए दिनांक 25.09.1998 को अपना कार्यभार किशनलाल को सौंप दिया था और प्रार्थी कार्यमुक्त हो गया था। कार्यग्रहण करने की अवधि के दौरान प्रार्थी गंभीर रूप से 51 दिन बीमार रहा जिसका अवकाश प्रार्थना पत्र मय बीमारी प्रमाण पत्र के प्रार्थी ने प्रस्तुत कर दिया, जिसके संबंध में प्रशासन ने कोई आपत्ति नहीं

की। प्रार्थी ने स्वस्थ होने पर उप क्षेत्रीय कार्यालय कोटा में कार्यग्रहण कर लिया। प्रार्थी को पूर्व निलंबन अवधि के निर्वाह भत्ता का भुगतान कर दिया गया। प्रार्थी के पते पर निलंबन आदेश नहीं भेजा गया। प्रार्थी को गलत आधार पर पूर्वाग्रह से ग्रसित होते हुए आरोप पत्र दे दिया गया। प्रार्थी को लंबी अवधि तक गलत रूप से निलंबित रखा गया। प्रार्थी के आरोप पत्र पर की गई जांच कार्यवाही अवैध है, प्रारंभिक जांच इकतरफा कर ली गई और उसकी रिपोर्ट बाद में प्रार्थी को भेजी गई। प्रार्थी के निवेदन पर पूर्ण निलंबन अवधि को सेवा अवधि मानते हुए 80 प्रतिशत निर्वाह भत्ता भुगतान कर दिया गया। जांच कार्यवाही बारह वर्षों से अवैध रूप से व प्राकृतिक न्याय के सिद्धांतों के विपरीत दुर्भावनावश लंबित है। दो बार अपील गलत रूप से निरस्त की गई, जिसकी पुनरीक्षण याचिका आज भी लंबित है, इसके बावजूद भी अनुशासनात्मक अधिकारी ने Biased जांच अधिकारी की जांच रिपोर्ट को आधार मानते हुए गलत शास्ती अधिरोपित की। प्रार्थी की अपील को स्वीकार करते हुए दिनांक 20.12.2004 को अपील स्वीकार कर शास्ती अपास्त की गई व तीन माह में पुनः जांच का आदेश दिया गया, यह जांच प्रारंभ नहीं की गई। प्रार्थी को देय लाभ प्रदान नहीं किया गया व उसकी वरीयता को नजरान्दाज करते हुए कनिष्ठ व्यक्तियों को पदोन्नति दी गई। केन्द्रीय भविष्य निधि आयुक्त ने स्वतः प्रसंज्ञान लेकर दिनांक 21.08.2006 को अपील अधिकारी के आदेश दिनांक 20.12.2004 को अपास्त करते हुए अनुशासनात्मक अधिकारी के आदेश दिनांक 19.12.2002 के दण्डात्मक आदेश को बहाल कर दिया व अप्रार्थी को प्रत्यावेदन प्रस्तुत करने के लिये समुचित समय दिया। उक्त आदेश पारित करने वाला अधिकारी न तो भारत सरकार है न ही केन्द्रीय बोर्ड है न ही उपरोक्त दोनों के द्वारा विशिष्ट आदेश के अधीन नियुक्त या मनोनीत अधिकारी है। इस प्रकार से आदेश 21.08.2006 को क्षेत्राधिकार से परे जाकर समयावधि से बाधित असंवैधानिक व शून्य है। प्रार्थी ने यह भी निवेदन किया है कि प्रार्थी की वार्षिक वेतन वृद्धि, पदोन्नति व एरियर का भुगतान गलत रूप से रोक रखा है। इस प्रकार से प्रार्थी ने विस्तृत मांग पत्र प्रस्तुत करते हुए आदेश 21.08.2006 को निरस्त करने की प्रार्थना करते हुए प्रार्थी को देय समस्त लाभ व पदोन्नति आदि प्रदान कराये जाने का निवेदन किया है। अपने तर्कों के समर्थन में प्रार्थी के विद्वान प्रतिनिधि ने निम्नलिखित न्यायिक दृष्टान्त व नियम पेश किये, जिनका हमने ससम्मान अवलोकन किया।

1. AIR 1984 Supreme Court 1462, S.K. Verma Vs. Mahesh Chadra and Others.
2. AIR 1984 Supreme Court 914, Ved Prakash Gupta Vs. M/s Delton Cable India (P) Ltd.
3. 1992 (2) W.L.C. 455, Dinesh Chand Sharma Vs. State of Rajasthan & ors.
4. 2000 (2) W.L.C. 338, The Management, M/s The Rambagh Palace Hotel Ltd. Bhawani Singh Marg. Jaipur Through its Area General Manager Shri Malvinder Narang V/s The State of Rajasthan.
5. 2007 (1) W.L.C. 17, State of Rajasthan & Ors. V/s Shri Harish Chandra Sharma & Ors.
6. The Employees Provident Fund Staff (Classification, Control & Appeal) Rules 1971, Part-VIII Revision & Review.

3. अप्रार्थी की ओर से मांग पत्र का विस्तृत जवाब प्रस्तुत करते हुए मांग पत्र को निरस्त किये जाने की प्रार्थना की है तथा कहा गया है कि प्रार्थी को आरोप पत्र संख्या 95 दिनांक 29.04.1999 को उसके निवास स्थान पर डाक द्वारा भेजा गया था, लेकिन प्रार्थी के घर यह कहा गया कि वह बाहर गया हुआ है। इस पत्र को घर के अन्य सदस्यों ने लेने से इन्कार कर दिया, जिसकी सूचना समाचार पत्र में प्रकाशित कराई गई। प्रार्थी को स्थानान्तरण आदेश दिनांक 24.09.1998 का पूर्ण ज्ञान था। प्रार्थी ने 51 दिन बीमारी का आवेदन किस माध्यम से भिजवाया, इसका खुलासा नहीं किया है। प्रार्थी ने कोई स्वास्थ्य प्रमाण पत्र प्रस्तुत किया, उसने कोटा में किस तारीख को कार्य ग्रहण किया यह नहीं बताया है। प्रार्थी को निर्वाह भत्ता देना स्वीकार किया गया है। प्रार्थी के विरुद्ध लगाया गया आरोप संख्या एक, दो व तीन सही हैं। आरोप पत्र पूर्वाग्रह से ग्रसित होकर नहीं दिया गया है बल्कि नियमों की अवहेलना करने पर नियमानुसार दिया गया है। प्रार्थी को पूर्ण सुनवाई का अवसर प्रदान किया गया। प्रार्थी जिम्मेदार पद पर कार्यरत है, उसकी गलती के लिये उसे निलंबित रखा गया। प्रार्थी को जांच कार्यवाही में बचाव का पूरा मौका दिया गया, लेकिन प्रार्थी का रवैया सही नहीं रहा व वह जांच कार्यवाही को बिना वजह लंबा खींचना चाहता था, इसी कारण उसने पुनरीक्षण याचिका विधि विरुद्ध तरीके से प्रस्तुत की। प्रार्थी के विरुद्ध की गई कार्यवाही नियमानुसार है। प्रार्थी किसी प्रकार का अनुतोष प्राप्त करने का अधिकारी नहीं है। प्रार्थी श्रमिक की श्रेणी में नहीं आता है, न ही कोई ट्रेड यूनियन प्रार्थी की पैरवी कर सकती है। प्रार्थी ने यह भी निवेदन किया है कि श्रम न्यायालय को इस विवाद को सुनने का श्रवणाधिकार व क्षेत्राधिकार नहीं है। अप्रार्थी ने यह भी निवेदन किया है कि मांगपत्र में पद संख्या-12 में उठाये गये मुद्दे प्रार्थी इस प्रकरण में प्राप्त नहीं कर सकता क्योंकि वे विधि अनुसार रोके गये हैं। 'केट' जोधपुर के आदेश दिनांक 21.06.1991 की पालना के लिये इस प्रकरण में कोई आदेश विधि अनुसार नहीं दिया जा सकता। प्रार्थी की वरिष्ठता का मुद्दा मांगपत्र में नहीं लिया जा सकता। पद संख्या 24 में मांग गया अनुतोष इस प्रकरण से संबंधित नहीं है। इस प्रकार से अप्रार्थी ने एक प्रकरण में कई मुद्दे बिना किसी विधिक रेफरेन्स के प्रार्थी को प्राप्त नहीं होने का कथन करते हुए मांगपत्र में मांगे गये अनुतोष को स्वीकार योग्य नहीं बताया है। इस मांगपत्र को सव्यय खारिज किये जाने की प्रार्थना की है।

4. प्रार्थी की ओर से साक्ष्य में स्वयं के कथन लेखबद्ध करवाये गये व दस्तावेजात प्रदर्श-1 से प्रदर्श-5 को प्रदर्श कराया गया। अप्रार्थी की ओर से कुलदीप सिंह रावत, जे० एन० दुलानी के शपथ पत्र प्रस्तुत किये गये। जे० एन० दुलानी को प्रतिपरीक्षा हेतु उपस्थित रखा गया, जिससे प्रार्थी प्रतिनिधि ने प्रतिपरीक्षा की। अप्रार्थी की ओर से प्रदर्श-1 लगायत प्रदर्श-38 दस्तावेजात प्रदर्श कराये गये।

5. हमने दोनों प्रतिनिधिगण की बहस सुनी। सम्पूर्ण पत्रावली का ध्यानपूर्वक अवलोकन किया।

6. विद्वान प्रतिनिधि की ओर से श्री विजय मेहता ने बहुत संक्षिप्त बहस करते हुए निवेदन किया है कि The Employees Provident Fund Staff (Classification, Control & Appeal) Rules 1971, Part-VIII Revision & Review के नियम 25 में बताये गये अधिकारी ही रिबीजन सुनने में सक्षम हैं। उनका निवेदन है कि प्रार्थी के मामले में पारित विवादित आदेश दिनांक 21.08.2006 इस नियम में

बताये गये सक्षम अधिकारी के द्वारा पारित नहीं किया गया है। इस प्रकार से उन्होंने आदेश दिनांक 21.08.2006 को निरस्त किये जाने की प्रार्थना कर मांग पत्र स्वीकार करने का निवेदन किया है।

7. विद्वान प्रतिनिधि अप्रार्थी ने भी बहुत संक्षिप्त बहस करते हुए निवेदन किया है कि धारा 2 एस औद्योगिक विवाद अधिनियम 1947 के अन्तर्गत जो श्रमिक की परिभाषा दी गई है, प्रार्थी का मामला उसके अन्तर्गत नहीं आता क्योंकि प्रार्थी सुपरवाइजर के पद पर कार्यरत होते हुए प्रतिमाह 28,000/- रुपये वेतन प्राप्त कर रहा है। उसका बेसिक वेतन 14,300/- रुपये प्रतिमाह है। इस प्रकार उनका निवेदन है कि प्रार्थी श्रमिक नहीं है। ऐसी परिस्थितियों में न्यायालय इस विवाद में कोई अनुतोष नहीं दे सकता तथा इस न्यायालय को यह विवाद सुनने का अधिकार नहीं है। प्रार्थी अगर विवादित आदेश से पीड़ित है तो उसे सक्षम न्यायालय/अधिकरण में अपना मामला प्रस्तुत करना चाहिये। इस प्रकार से उन्होंने मांग पत्र को निरस्त किये जाने की प्रार्थना की है।

8. विद्वान प्रतिनिधि अप्रार्थी की बहस का जवाब देते हुए विद्वान प्रतिनिधि प्रार्थी ने यह निवेदन किया है कि यह न्यायालय किये गये रेफरेंस से बाध्य है, यह न्यायालय रेफरेंस से बाहर नहीं जा सकता। विद्वान प्रतिनिधि अप्रार्थी ने जो आपत्ति ली है वह बहस के दौरान सर्वप्रथम ली है। ऐसी परिस्थितियों में उनकी आपत्ति ग्रहण किये जाने योग्य नहीं है।

9. हमने उभयपक्ष के द्वारा रखे गए तर्कों पर गंभीरतापूर्वक विचार किया।

10. सर्वप्रथम हम इस बात पर विचार करेंगे कि क्या विद्वान प्रतिनिधि अप्रार्थी ने प्रार्थी के श्रमिक नहीं होने का तर्क बहस में प्रथम बार उठाया है। इस संबंध में यदि अप्रार्थी की ओर से प्रस्तुत जवाब को देखें तो जवाब के पूर्व संख्या-20 में अप्रार्थी के द्वारा यह तर्क लिया गया है कि प्रार्थी श्रमिक की श्रेणी में नहीं आता तथा इस न्यायालय को इस मामले में श्रवणाधिकार व क्षेत्राधिकार नहीं है। इस प्रकार से विद्वान प्रतिनिधि प्रार्थी के इस तर्क में कोई बल नहीं है कि अप्रार्थी प्रतिनिधि ने उक्त बिन्दु बहस के दौरान प्रथम बार उठाया है।

11. श्रमिक की परिभाषा के बारे में विचार करें तो धारा 2 एस औद्योगिक विवाद अधिनियम में श्रमिक की परिभाषा दी गई है। धारा 2 एस (iv) निम्न प्रकार है:-

"who, being employed in a supervisory capacity, Draws wages exceeding (ten thousand rupees) per mensem or exercise, either by the nature of the duties attached to the office or by reason of the power vested in him, function mainly of a managerial nature."

इस प्रकार धारा 2 एस (iv) में Supervisory Capacity, में आने वाले व्यक्ति जिसका वेतन ten thousand rupees per mensem से अधिक है और उसके कार्य की प्रकृति managerial है तो वह श्रमिक की परिभाषा में नहीं आता।

12. अब इस परिप्रेक्ष्य में हम प्रार्थी जवाहरलाल की साक्ष्य को देखें तो यह साक्षी प्रतिपरीक्षा में कहता है कि मैं शाखा पर्यवेक्षक के पद पर कार्यरत हूँ, मैं सेक्शन सुपरवाइजर के पद पर कार्यरत हूँ, मेरे साथ एक

आदमी काम करता है, मेरे अधीन कोई कार्यरत नहीं है। वह मेरे या मैं उनके अधीन कार्यरत नहीं हूँ। मैं शाखा में झाड़ू नहीं निकालता। मैं फाईलें स्वयं लाता हूँ। मेरे सेक्शन में सामाजिक सुरक्षा सहायक कार्यरत है। पत्रावली संबंधित सुरक्षा सहायक लाता है, वह मेरा बोस नहीं है। यह गलत है वह मेरे अधीन कार्यरत हो। मैं शाखा सुपरवाइजर के पद पर कार्यरत हूँ। मेरा बेसिक वेतन करीब 14,300/- रुपये है, 'ग्रेस सेलरी' लगभग 28,000/- मिलती है। इस प्रकार से प्रार्थी की उपरोक्त साक्ष्य से यह प्रकट होता है कि प्रार्थी शाखा सुपरवाइजर के पद पर कार्यरत है। प्रार्थी अपनी ही शाखा में कार्यरत अन्य स्टॉफ को अपने अधीन नहीं होना कहता है। मेरे विनम्र मत में प्रार्थी का यह कथन सत्य प्रतीत नहीं होता। सेक्शन सुपरवाइजर का कार्य Managerial कार्य हो, यह बात नहीं मानी जा सकती। प्रार्थी का वेतन स्वीकृत रूप से 28,000/- रुपये प्रतिमाह है। इस प्रकार से मेरे विनम्र मत में प्रार्थी धारा 2 एस के अन्तर्गत परिभाषित श्रमिक की परिभाषा में नहीं आता है।

13. विद्वान प्रतिनिधि प्रार्थी ने न्यायिक दृष्टान्त AIR 1984 Supreme Court 1462, S.K. Verma Vs. Mahesh Chandra and others प्रस्तुत किया है। इस न्यायिक दृष्टान्त के तथ्य परिस्थितियां वेतन आदि वर्तमान मामले के तथ्यों से मेल नहीं खाते हैं। इस प्रकार से इस न्यायिक दृष्टान्त से प्रार्थी को कोई लाभ नहीं पहुँचता। न्यायिक दृष्टान्त AIR 1984 Supreme Court 1914, Ved Prakash Gupta Vs. M/s. Delton Cable India (P) Ltd. के मामले में फेक्ट्री में कार्यरत सिक्कोरिटी इन्स्पेक्टर के कार्य की प्रकृति को देखते हुए श्रमिक नहीं माना गया था। इस न्यायिक दृष्टान्त के तथ्य व परिस्थितियां वर्तमान मामले के तथ्य व परिस्थितियों से भिन्न हैं। इस प्रकार से इस न्यायिक दृष्टान्त से प्रार्थी को कोई लाभ नहीं पहुँचता। न्यायिक दृष्टान्त 1992(2) W.L.C. 455, Dinesh Chand Sharma Vs. State of Rajasthan & Ors. के मामले में प्रार्थी किसी प्रशासनिक अधिकारी के पद पर कार्यरत नहीं था। इस मामले में प्रार्थी का कार्य सुपरवाइजरी या मैनेजेरियल नहीं माना गया था। मेरे विनम्र मत में वर्तमान मामले के तथ्य व परिस्थितियां इस मामले के तथ्य व परिस्थितियों से भिन्न हैं। इसलिये यह न्यायिक दृष्टान्त इस मामले में लागू नहीं होता है। न्यायिक दृष्टान्त 2000 (2) W.L.C. 338, The Management, M/S The Rambagh Palace Hotel Ltd. Bhawani Singh Marg, Jaipur Through Its Area General Manager Shri Malvinder Narang Vs. The State of Rajasthan के मामले में यह अभिनिर्धारित किया गया है कि औद्योगिक अधिकरण रेफरेंस में कोई परिवर्तन, संशोधन या प्रतिस्थापन नहीं कर सकता। इस न्यायिक दृष्टान्त में प्रतिपादित सिद्धांत से हम पूर्णतः सहमत हैं। लेकिन जब वर्तमान मामले में अप्रार्थी की ओर से प्रारम्भिक प्रक्रम पर ही प्रार्थी के श्रमिक होने की आपत्ति ली गई है तो ऐसी परिस्थितियों में जो रेफरेंस इस न्यायालय को यह कहकर भेजा गया है कि प्रार्थी इस न्यायालय से क्या अनुतोष प्राप्त कर सकता है। इन परिस्थितियों में यह न्यायालय इस आपत्ति को सुनकर इसका विधि अनुसार निस्तारण करने में सक्षम है। ऐसी परिस्थितियों में इस न्यायिक दृष्टान्त से प्रार्थी को कोई लाभ नहीं पहुँचता। न्यायिक दृष्टान्त 2007 (1) W.L.C. 17, State of Rajasthan & Ors Vs. Shri Harish Chandra Sharama & Ors. के मामले में प्रारम्भिक प्रक्रम पर आक्षेप नहीं लगाने से सम्बन्धित तर्क का निस्तारण किया गया था। जैसा कि वर्तमान मामले में हमने यह पाया है कि अप्रार्थी की ओर से प्रारम्भिक स्तर पर ही प्रार्थी के श्रमिक नहीं होने

का आक्षेप लिया गया है। इस प्रकार से यह न्यायिक दृष्टांत वर्तमान मामले के तथ्य व परिस्थितियों से भिन्न होने के कारण लागू नहीं होता है।

—:अधिनिर्णय:—

14. अतः यह अधिनिर्णीत किया जाता है कि:—

1. प्रार्थी जवाहरलाल पुत्र श्री खेताराम, निवासी 141, नोर्थ बिजली घर के सामने जोधपुर श्रमिक की परिभाषा में नहीं आने के कारण इस न्यायालय से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

15. इस अधिनिर्णय को प्रकाशनार्थ भारत सरकार को प्रेषित किया जावे।

16. यह अधिनिर्णय मेरे द्वारा लिपिबद्ध करवाया जाकर आज दिनांक 03.02.2014 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

अनूप कुमार सक्सैना, न्यायाधीश
नई दिल्ली, 2 जुलाई, 2015

का.आ. 1363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर, भारत संचार निगम लिमिटेड, राजस्थान के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय जोधपुर के पंचाट (संदर्भ सं० 01/09) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2015 को प्राप्त हुआ था।

[सं० एल-40012/14/2008-आईआर(डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 01/09) of the Industrial Tribunal Cum Labour Court, Jodhpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Chief General Manager, Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 30/06/2015.

[No. L-40012/14/2008-IR(DU)]

P. K. VENUGOPAL, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण

एवं

श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी : श्री अनूप कुमार सक्सैना
आर०एच०जे०एस०

औद्योगिक विवाद (केन्द्रीय) संख्या: 01/2009

श्रीमती प्यारी बाई पत्नि श्री बाबुलाल जी जाति हरिजन निवासी
माण्डवाला तहसील एवं जिला नागौर।

..... प्रार्थिनी

बनाम

1. चीफ जनरल मैनेजर, भारत संचार निगम लिमिटेड, राजस्थान सर्कल, सरदार पटेल मार्ग, सी-स्कीम, जयपुर।
2. सहायक जनरल मैनेजर, (प्रशासन) भारत संचार निगम लिमिटेड, राजस्थान सर्कल, सरदार पटेल मार्ग, सी-स्कीम, जयपुर।
3. उप मण्डल अभियन्ता (प्रशासन) कार्यालय महाप्रबंधक दूर संचार भारत संचार निगम लि० सिरोही।

.... अप्रार्थीगण

उपस्थित:

- (1) प्रार्थिनी प्रतिनिधि श्री एस०के०एम० व्यास।
- (2) अप्रार्थीगण प्रतिनिधि श्री ललित व्यास।

—:अधिनिर्णय:—

दिनांक: 20.01.2014

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक L-40012/14/2008-IR(DU) dated 28.11.2008 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया है:—

"Whether the action of the Management of Sub-Divisional Engineer (Admn.) Bharat Sanchar Nigam Limited, Sirohi, in terminating the services of their workman Smt. Pyari Bai w.e.f. 21.01.2006 is legal and justified? If not, to What relief the workman is entitled to?"

2. प्रार्थिनी ने अपने माँग-पत्र में यह उल्लेख किया है कि प्रार्थिनी की प्रथम नियुक्ति वर्ष 1984 में केजुअल लेबर के रूप में अप्रार्थी सं० 3 के अधीन की गई। अप्रार्थीगण अपने अधीन सभी कार्यालयों से कार्य कर रहे केजुअल श्रमिकों के संबंध में जो अंशकालीन कार्य कर रहे थे उन्हें पूर्णकालीन कर्मचारी बनाए जाने के संबंध में कार्यवाही की जाती रही। प्रार्थिनी के संबंध में भी इस संबंध में पत्रावली संबंधित उच्च अधिकारियों को भिजवाई गई, लेकिन अप्रार्थी सं० 3 ने प्रार्थिनी की सेवाएं नियमित नहीं की। अप्रार्थीगण द्वारा अवैध रूप से प्रार्थिनी की सेवाएं समाप्त कर दी गईं। जिस संबंध में प्रार्थिनी द्वारा कार्यालय से सम्पर्क करने पर दिनांक 21.01.2006 को सूचित किया गया कि प्रार्थिनी की सेवाएं समाप्त कर दी गई हैं क्योंकि वह अगस्त 1998 से कार्यरत नहीं हैं। प्रार्थिनी ने उल्लेख किया है कि उसका केस वर्ष 2002 एवं 2003 में लगा था तथा अप्रार्थीगण के कार्यालय में स्वयं द्वारा उच्चाधिकारियों को भिजवाया गया था जिसमें यह स्पष्ट किया गया है कि प्रार्थिनी 1984 से लगातार कार्य कर रही है।

3. प्रार्थिनी ने आगे उल्लेख किया है कि उसके साथ नियुक्त एवं बाद में नियुक्त कर्मचारियों को अप्रार्थीगण द्वारा पूर्णकालिक कर्मचारी के रूप में नियमित कर दिया गया लेकिन प्रार्थिनी की सेवाएं बिना किसी लिखित आदेश एवं बिना कोई सुनवाई का अवसर दिये समाप्त कर दी गई। प्रार्थिनी द्वारा अप्रार्थी विभाग में वर्ष 1984 से करीब 22 वर्ष तक लगातार सेवाएं ने के बावजूद दिनांक 21.01.2006 को सेवाएं समाप्त कर दी गई। सेवा समाप्ति से पूर्ण प्रार्थिनी को एक माह का नोटिस, वेतन मुआवजा आदि प्रदान नहीं किया गया व औद्योगिक विवाद अधिनियम की धारा 25-एफ के प्रावधानों का उल्लंघन किया गया।

4. यह भी उल्लेख किया है कि अप्रार्थी विभाग ने प्रार्थियों को वर्ष 1998 से कार्यरत नहीं होने के आधार पर दिनांक 21.01.2006 को सेवाएं समाप्त कर दी जबकि अप्रार्थी विभाग ने अपने कई पत्रों व अन्य दस्तावेजों में प्रार्थिनी द्वारा वर्ष 2001 व 2002 में कार्यरत होना स्वीकार किया है अतः सेवा समाप्ति का आदेश दिनांक 21.01.2006 निरस्त घोषित होने योग्य है। उक्त आधारों पर प्रार्थिनी ने निवेदन किया है कि उसकी सेवामुक्ति का आदेश अवैध ठहराया जाकर सभी सुसंगत परिलाभ मय सेवा निरन्तरता के प्रदान किये जाने का प्रार्थिनी को अधिकारी घोषित किया जावे।

5. अप्रार्थीगण ने प्रत्युत्तर प्रस्तुत कर प्रारम्भिक आपत्तियों में कहा है कि चीफ जनरल मैनेजर, सहायक जनरल मैनेजर एवं उपमण्डल अभियन्ता नियोक्ता की परिभाषा में नहीं आते हैं। प्रार्थिनी द्वारा भारत संचार निगम लिमिटेड को पक्षकार के रूप में संयोजित नहीं किया है अतः प्रार्थिनी का माँग-पत्र इसी आधार पर खारिज किये जाने योग्य है। यह भी उल्लेख किया है कि प्रार्थिनी को नियुक्ति देने से पूर्व नियमानुसार निर्धारित प्रक्रिया नहीं अपनाई गई न ही अप्रार्थी निगम ने प्रार्थिनी की सेवाएं समाप्त की हैं। प्रार्थिनी श्रमिक की परिभाषा में नहीं आती है, प्रार्थिनी स्वयं माह अगस्त 1998 से अनुपस्थित रही है इस कारण प्रार्थिनी पुनः सेवा में लिये जाने की अधिकारी नहीं है। प्रार्थिनी ने यह विवाद असाधारण विलम्ब से उठाया है। अतः उक्त आधारों पर प्रार्थिनी का माँग-पत्र खारिज किया जावे।

6. आगे प्रत्युत्तर में कहा है कि प्रार्थिनी का यह कथन गलत है कि अप्रार्थीगण द्वारा प्रार्थिनी को वर्ष 1984 में अंशकालीन श्रमिक के रूप में नियुक्ति दी हो तथा प्रार्थिनी ने संतोषजनक सेवाएं विभाग को दी हो। वास्तविकता में अप्रार्थी विभाग ने प्रार्थिनी को पूर्णतया अस्थाई तौर पर आकस्मिक मजदूर के रूप में आवश्यकता के आधार पर कार्य पर रखा था। स्वयं प्रार्थिनी ने माह अगस्त 1998 से कार्य पर आना स्वेच्छा से बन्द कर दिया था। प्रार्थिनी ने किसी भी वर्ष में 240 दिवस अथवा उससे अधिक अंशकालीन श्रमिक के रूप में कार्य नहीं किया। यह भी उल्लेख किया है कि अप्रार्थी विभाग में अंशकालीन श्रमिक को पूर्णकालिक श्रमिक के रूप में नियुक्त करने की निर्धारित प्रक्रिया एवं मापदण्ड है एवं जिनके द्वारा पिछले एक वर्ष में 240 दिवस अथवा उससे अधिक समय तक अंशकालीन श्रमिक के रूप में कार्य किया हो उन्हें ही पूर्णकालिक श्रमिक का दर्जा दिया गया था। प्रार्थिनी अपनी स्वेच्छा से माह अगस्त 1998 से आकस्मिक श्रमिक के रूप में कार्य करने हेतु अप्रार्थी विभाग में उपस्थित नहीं हुई थी इस कारण प्रार्थिनी पूर्णकालिक आकस्मिक श्रमिक की पात्रता ग्रहण करने योग्य नहीं थी। अतः अप्रार्थी विभाग ने प्रार्थिनी को पूर्णकालिक आकस्मिक श्रमिक का दर्जा नहीं दिया जिसकी सूचना

प्रार्थिनी को जरिये पत्र दिनांक 21.01.2006 को प्रेषित कर दी गई थी।

7. अप्रार्थीगण ने आगे उल्लेख किया है कि वास्तविकता में अप्रार्थी विभाग ने पत्र दिनांक 21.01.2006 के जरिये प्रार्थिनी की सेवाएं समाप्त नहीं की थीं वरन अप्रार्थी विभाग ने प्रार्थिनी को यह सूचित किया था कि प्रार्थिनी माह अगस्त 1998 से पार्ट टाइम स्वीपर के रूप में कार्यरत नहीं है इस कारण प्रार्थिनी विभाग के निर्धारित मापदण्डों एवं विभागीय नियमों के तहत पूर्णकालिक आकस्मिक मजदूर की पात्रता नहीं रखती है। चूंकि प्रार्थिनी की कभी नियुक्ति ही नहीं की गई थी इस कारण उसकी सेवाएं समाप्त करने का तथ्य पूर्णतया गलत है। यह भी उल्लेख किया है कि अप्रार्थी विभाग के कार्यालय से उच्च अधिकारियों को भिजवाई गई रिपोर्ट में कहीं भी यह तथ्य अंकित नहीं है कि प्रार्थिनी वर्ष 1984 से लगातार कार्यरत है। प्रार्थिनी का यह कथन भी गलत है कि उसके द्वारा वर्ष 1998 से लगातार 22 वर्ष तक सेवाएं दी गई हों। अप्रार्थी विभाग द्वारा प्रार्थिनी को कार्य की आवश्यकता के अनुसार अंशकालीन श्रमिक के रूप में कार्य पर बुलाया जाता था तथा माह अगस्त 1998 से प्रार्थिनी ने स्वेच्छापूर्वक कार्य पर आना बन्द किया था। प्रार्थिनी औद्योगिक विवाद अधिनियम के प्रावधानों के तहत श्रमिक की परिभाषा में नहीं आती है इस कारण प्रार्थिनी के मामले में धारा 25-एफ के प्रावधान लागू नहीं होते हैं। उक्त आधारों पर अप्रार्थीगण ने निवेदन किया कि प्रार्थिनी का माँग-पत्र सव्यय खारिज किया जावे।

8. प्रार्थिनी ने अपने माँग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्रार्थिनी से प्रतिपरीक्षा की गई। प्रार्थिनी की ओर से प्रलेखीय साक्ष्य में पत्र दिनांक 25.01.2004 प्रदर्श-1, पत्र दिनांक 11.06.2002 प्रदर्श-2, कार्यालय का पत्र प्रदर्श-3, कार्यालय आदेश प्रदर्श-4, प्रार्थिनी का प्रार्थना-पत्र प्रदर्श-5, अप्रार्थी का पत्र प्रदर्श-6, ग्राम पंचायत माण्डवला का प्रमाण-पत्र प्रदर्श-7, प्रार्थिनी का आवेदन-पत्र प्रदर्श-8, प्रदर्श-9, प्रदर्श-10, प्रार्थिनी का प्रार्थना-पत्र प्रदर्श-11, अप्रार्थी का पत्र प्रदर्श-12, अप्रार्थी का कार्यालय आदेश प्रदर्श-13, प्रदर्श-14, रजिस्टर्ड नोटिस प्रदर्श-15, माननीय उच्च न्यायालय का आदेश प्रदर्श-16 तथा अप्रार्थी का पत्र प्रदर्श-17 को पेश कर प्रदर्श करवाये गए। अप्रार्थीगण की ओर से मोहनलाल रासु, व श्री सोहनलाल वर्मा के शपथ-पत्र प्रस्तुत किये गये जिनसे प्रतिपरीक्षा की गई। अप्रार्थीगण की ओर से प्रलेख्य साक्ष्य में उपस्थिति रजिस्टर की प्रति प्रदर्श ए-1 व अप्रार्थी का पत्र प्रदर्श ए-2 को पेश कर प्रदर्श करवाये गये।

9. बहस उभय-पक्ष सुनी गई। पत्रावली का ध्यानपूर्वक अवलोकन किया गया।

10. विद्वान प्रतिनिधि प्रार्थिनी ने बहस के दौरान निवेदन किया है कि प्रार्थिनी ने अप्रार्थीगण के अधीन कैजुअल लेबर के रूप में वर्ष 1984 से निरन्तर कार्य किया है। अप्रार्थीगण द्वारा दिनांक 21.01.2006 को अवैध रूप से उसे सेवामुक्त किया गया। इस प्रकार प्रार्थिनी ने वर्ष 1984 से वर्ष 2006 तक लगातार काम किया है। उनका कहना है कि जो पार्ट टाइम श्रमिक हैं वे भी वर्कमैन की परिभाषा में आते हैं। उनका यह भी तर्क है कि जो दस्तावेज प्रार्थिनी ने पेश किये हैं उनमें यह हवाला है कि प्रार्थिनी का मामला रेगुलराइजेशन के लिए अप्रार्थी ने वर्ष 2003 में भी भिजवाया था।

इस संबंध में अप्रार्थीगण यह कहकर आये हैं कि प्रार्थिनी वर्ष 1998 के बाद कभी आई ही नहीं तो अप्रार्थीगण का यह कथन कि प्रार्थिनी वर्ष 1998 के बाद नहीं आई, उक्त दस्तावेज से गलत साबित हो जाता है। प्रार्थिनी की ओर से यह भी निवेदन किया गया है कि अप्रार्थीगण की ओर से पूरे दस्तावेज पेश नहीं किये गये हैं और बयान भी झूठे दिये गये हैं। उनका निवेदन है कि प्रार्थिनी को अप्रार्थीगण द्वारा विधिवत् रूप से औद्योगिक विवाद अधिनियम के प्रावधानों की पालना करते हुए सेवामुक्त नहीं किया गया है इसलिये प्रार्थिनी की सेवामुक्ति अनुचित एवं अवैध है। अन्त में उन्होंने निवेदन किया कि प्रार्थिनी द्वारा मांगा गया अनुतोष उसे प्रदान किया जावे। उन्होंने अपने तर्क की पुष्टि में न्यायिक दृष्टांत Divisional Manager New India Assurance Co. Ltd. Vs. A. Sankaralingam AIR 2009 Supreme Court 309 पेश किया जिसका हमने ससम्मान अवलोकन किया।

11. अप्रार्थीगण के विद्वान प्रतिनिधि ने बहस के दौरान निवेदन किया है कि प्रार्थिनी को अप्रार्थीगण द्वारा वर्ष 1984 में अंशकालीन श्रमिक के रूप में नियुक्ति नहीं दी। प्रार्थिनी ने अपनी कोई जॉइनिंग तारीख भी नहीं बताई न ही कब तक कार्य किया वह तारीख बताई है, कितने दिन प्रतिमाह में कार्य किया यह भी नहीं बताया है। उनका यह भी कहना है कि आवश्यकता अनुसार श्रमिकों को कार्य पर लेते थे तथा केवल उन श्रमिकों के रेगुलराइजेशन के केस भेजे गये थे जिन्होंने पिछले वर्ष 240 दिन पूरे कर लिये थे। उनका निवेदन है कि प्रार्थिनी इस कन्डीशन को फुलफिल नहीं करती थी इसलिये उसका केस नहीं भेजा गया था। उनका यह भी निवेदन है कि हाजरी रजिस्टर में प्रार्थिनी का नाम अंकित नहीं है इसलिये प्रार्थिनी वर्ष 1998 के बाद उनके यहाँ काम करने नहीं आई इसलिये प्रार्थिनी का मामला डिस्पयुटेड है। उन्होंने निवेदन किया कि जो दस्तावेज प्रार्थिनी की ओर से पेश किये गये हैं उसके बारे में प्रार्थिनी कोई बात नहीं बता पाई है तथा यह कहा है कि इन दस्तावेजात के बारे में कोई जानकारी नहीं है वह अनपढ़ है और ये दस्तावेजात विभाग की प्रमाणित प्रतिलिपि नहीं है इसलिये यही माना जाना चाहिये कि प्रार्थिनी की ओर से ऐसे कोई दस्तावेजात पेश नहीं किये गये हैं जिससे यह प्रमाणित हो कि वर्ष 1998 के बाद उसे कोई वेतन मिला हो। अन्त में उन्होंने निवेदन किया कि प्रार्थिनी कोई अनुतोष प्राप्त करने की अधिकारी नहीं है इसलिये प्रार्थिनी का मांग-पत्र निरस्त किया जावे।

12. हमने दोनों पक्षों के तर्कों पर गम्भीरतापूर्वक विचार किया।

13. सर्वप्रथम हम इस प्रकरण में इस बात पर विचार करेंगे कि प्रार्थिनी की ओर से जो दस्तावेजात पेश किये गये हैं उनकी स्थिति क्या है? अप्रार्थी की ओर से इस बात पर कोई विवाद नहीं किया गया है कि प्रार्थिनी ने वर्ष 1984 से कार्य नहीं किया। केवल प्रार्थिनी द्वारा तारीख का खुलासा नहीं किया गया है। वर्ष 1998 तक तो अप्रार्थीगण भी प्रार्थिनी द्वारा कार्य करना कहते हैं। यद्यपि प्रार्थिनी के कार्य दिवसों के बारे में कोई खुलासा नहीं हुआ है इसके बावजूद भी प्रार्थिनी की ओर से जो दस्तावेजात पेश किये गये हैं उनके बारे में अप्रार्थीगण का कहना है कि वे विभाग के दस्तावेज नहीं हैं, इस बारे में विचार करें तो अप्रार्थीगण का साक्षी सोहनलाल वर्मा डी० डब्ल्यू-2 अपनी प्रतिपरीक्षा में कहता है कि प्रार्थिनी की ओर से प्रस्तुत दस्तावेजात प्रदर्श-2, 3, 4, 6, 13, 14, व प्रदर्श-17 हमारे विभाग के दस्तावेज हैं। डी० डब्ल्यू-1 मोहनलाल रासु अपनी प्रतिपरीक्षा में कहता है कि जो प्रदर्श विभाग द्वारा जारी किये गये हैं वे विभाग के हैं।

गवाह कहता है कि प्रदर्श-3 पर प्यारीबाई का नाम लिखा हुआ है। यद्यपि उसने यह कहा है कि वह कौनसी प्यारी बाई थी मैं यह नहीं जानता हूँ। उक्त साक्षी ने प्रदर्श-13 के बारे में कहा है कि यह दस्तावेज चीफ जनरल मैनेजर द्वारा मार्क किया गया है और यह दस्तावेज प्यारी बाई के संबंध में स्लिप ऑफ पेन के कारण भेजा गया है, था। गवाह यह भी कहता है कि प्रदर्श-17 में प्रार्थिनी का नाम लिखा हुआ है, लेकिन स्लिप ऑफ पेन के कारण यह पत्र भेजा गया था। इस प्रकार जो साक्ष्य अप्रार्थीगण के ओर आई है उससे यह बात तो स्पष्ट है कि जो दस्तावेज प्रार्थिनी की ओर पेश किये गये हैं वे अप्रार्थी विभाग के दस्तावेज हैं व इनमें प्रदर्श-3 व प्रदर्श-13 दस्तावेज में प्रार्थिनी का नाम भी अंकित है। अब जब अप्रार्थीगण ने दोनों गवाह की साक्ष्य से प्रार्थिनी की ओर से प्रस्तुत दस्तावेजात विभाग के दस्तावेज होना सामने आया है तो प्रार्थिनी जो अनपढ़ है उसके यह कह देने मात्र से कि इन दस्तावेजात के बारे में वह कुछ नहीं जानती है तो प्रकरण की परिस्थितियों पर कोई विपरीत प्रभाव नहीं पड़ता है।

14. अप्रार्थीगण यह कहकर आये हैं कि वर्ष 1998 के बाद प्रार्थिनी ने कोई कार्य नहीं किया जबकि प्रार्थिनी का कहना है कि उसने वर्ष 2006 तक कार्य किया। इस संबंध में दोनों पक्षों में किस का कथन सत्य है इस बात पर विचार करें तो अप्रार्थीगण के साक्षी डी० डब्ल्यू-2 सोहनलाल वर्मा की प्रतिपरीक्षा को देखें तो वह अपनी प्रतिपरीक्षा में कहता है कि प्रदर्श-3 में ए टू बी भाग में प्यारी बाई लिखा हुआ है यह सही है। गवाह यह भी कहता है कि यह सही है कि यह दस्तावेज प्रदर्श-3 दिनांक 30.07.2003 को जारी हुआ है जो सी टू डी है। आगे प्रतिपरीक्षा में यह साक्षी कहता है कि प्रदर्श-13 में ए टू बी भाग पर प्रार्थीया का नाम लिखा हुआ है जो सही है तथा सी टू डी भाग भी दस्तावेज के अनुसार सही है। यह सही है कि यह दस्तावेज 26.12.2002 को जारी हुआ था। प्रदर्श-13 को देखें तो इसमें ए टू बी भाग में प्रार्थिनी का नाम लिखा हुआ है और सी टू डी भाग में "working since opening of exch. i.e. in 1984 & continue working at present" अंकित है। इससे भी यह प्रमाणित हो जाता है कि प्रार्थिनी अपनी जॉइनिंग की तिथि से पत्र जारी करने की तिथि तक लगातार कार्यरत थी। ऐसी परिस्थितियों में अप्रार्थी का यह कथन कि प्रार्थिनी ने केवल 1998 तक ही कार्य किया है, यह बात असत्य व झूठी साबित होती है।

15. प्रदर्श-3 दस्तावेजात को भी यदि देखें तो यह दस्तावेज दिनांक 30.07.2003 को जारी हुआ है और इस पत्र के अवलोकन से यह भी सामने आता है कि इसमें क्रम सं० 1 में यह इबारत भी लिखी गई है कि प्यारी बाई का केस प्राप्त नहीं हुआ। इसमें यह भी लिखा गया है कि "srl. No. 1, 3, & 4 may be converted into full time c/Labour." यहाँ यह उल्लेख करना उचित होगा कि अप्रार्थीगण की ओर से खण्डन में ऐसी कोई साक्ष्य पेश नहीं की गई है कि यह प्यारी बाई प्रार्थिनी नहीं हो। यद्यपि अप्रार्थीगण अपना जो पक्ष लेकर आये हैं कि प्रार्थिनी वर्ष 1998 के बाद कभी नहीं आई, उपरोक्त तथ्यों से बिल्कुल झूठा प्रमाणित होता है और ऐसी स्थिति में प्रार्थिनी का कथन सही माने जाने योग्य है। जो दस्तावेजी साक्ष्य है उससे यही प्रकट होता है कि प्रार्थिनी वर्ष 1984 से लगातार काम कर रही है।

16. प्रार्थिनी की ओर से प्रस्तुत न्यायिक दृष्टांत Divisional Manager New India Assurance Co. Ltd. Vs. A. Sankaralingam AIR 2009 Supreme Court 309 में प्रतिपादित सिद्धांतों से यह बात प्रमाणित है कि जो पार्ट टाइम बेसिस पर कार्य करने वाले हैं वे भी वर्कमैन की परिभाषा में आते हैं।

17. अब यदि इस बात पर विचार करें कि प्रार्थिनी को सेवामुक्ति से पूर्व अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम के प्रावधानों की पालना की गई अथवा नहीं तो इस संबंध में अप्रार्थीगण का यह कहना नहीं है कि प्रार्थिनी को औद्योगिक विवाद अधिनियम की धारा 25-एफ, जी व एच की पालना करके निकाला गया हो। ऐसी स्थिति में यही प्रमाणित होता है कि अप्रार्थीगण द्वारा प्रार्थिनी की सेवा समाप्ति से पूर्व औद्योगिक विवाद अधिनियम के प्रावधानों की पालना नहीं की गई प्रार्थिनी द्वारा वर्ष 1984 से वर्ष 2006 तक काम किया गया है जो स्वयं अप्रार्थीगण के दस्तावेजात व उपरोक्त विवेचन से साबित है ऐसी स्थिति में मेरे विनम्र मत् में अप्रार्थीगण द्वारा प्रार्थिनी की सेवामुक्ति अनुचित एवं अवैध है एवं प्रार्थिनी को सेवा में पुनर्स्थापित करना न्यायहित में आवश्यक है।

18. उपरोक्त विवेचन के आधार पर यह प्रमाणित होता है कि प्रार्थिनी का अप्रार्थी नियोजक द्वारा दिनांक 21.01.2006 को अवैध तरीके से सेवामुक्त किया गया है। प्रार्थिनी ने अप्रार्थी नियोजक के अधीन करीब 22-23 वर्ष तक कार्य किया है। अतः इस प्रकरण की समस्त परिस्थितियों में प्रार्थिनी को सेवापृथक्ता की तिथि 21.01.2006 से सेवा में पुनर्स्थापित किए जाने की तिथि तक 25 प्रतिशत पूर्वभूति (back wages) सहित व पूर्व सेवा की निरन्तरता सहित सेवा में पुनर्स्थापित किए जाने के आदेश दिया जाना उचित है।

—:अधिनिर्णय:—

19. अतः यह अधिनिर्णीत किया जाता है कि:—

- (1) प्रार्थिनी श्रीमती प्यारी बाई पत्नि श्री बाबुलाल को अप्रार्थी नियोजकगण 1. चीफ जनरल मैनेजर, भारत संचार निगम लिमिटेड, राजस्थान सर्कल सरदार पटेल मार्ग, सी-स्कीम, जयपुर 2. सहायक जनरल मैनेजर (प्रशासन) भारत संचार निगम लिमिटेड, राजस्थान सर्कल, सरदार पटेल मार्ग, सी-स्कीम, जयपुर व 3. उप मण्डल अभियन्ता (प्रशासन) कार्यालय महाप्रबंधक दूर संचार भारत संचार निगम लि., सिरोंही द्वारा दिनांक 21.01.2006 से सेवामुक्त करना अनुचित एवं अवैध है।
- (2) अप्रार्थी नियोजकगण प्रार्थिनी श्रीमती प्यारी बाई पत्नि श्री बाबुलाल को तुरन्त प्रभाव से सेवा में पुनर्स्थापित करें। प्रार्थिनी की सेवायें निरन्तर मानी जावेंगी।
- (3) प्रार्थिनी श्रीमती प्यारी बाई पत्नि श्री बाबुलाल को सेवापृथक्ता की दिनांक 21.01.2006 से सेवा में पुनर्स्थापित किए जाने की तिथि तक 25 प्रतिशत पूर्वभूति (back wages) अप्रार्थी नियोजक से प्राप्त करने का अधिकारी घोषित किया जाता है।

20. इस अधिनिर्णय को प्रकाशनार्थ भारत-सरकार को प्रेषित किया जावे।

21. यह अधिनिर्णय मेरे द्वारा लिखाया जाकर आज दिनांक 20.01.2014 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

अनूप कुमार सक्सैना, न्यायाधीश

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1364.—औद्योगिक विवाद, अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इस्टेट डिफेंस ऑफिसर, इस्टेट डिफेंस ऑफिस, जोधपुर के प्रबंधन के संबंध में उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जोधपुर के पंचाट (संदर्भ संख्या 01/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं० एल-14012/7/2011-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1364.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 01/12) of the Industrial Tribunal Cum Labour Court, Jodhpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to management of the Estate Defence Officer, Estate Defence Office, Jodhpur and their workman, which was received by the Central Government on 30/06/2015.

[No. L-14012/7/2011-IR (DU)]

P.K. VENUGOPAL, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण

एवं

श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी

: श्री अनूप कुमार सक्सैना

आर०एच०जे०एस०

आद्यौगिक विवाद (केन्द्रीय) संख्या:-01/2012

श्री राधेश्याम पुत्र श्री काशीराम जरिये श्री श्रीनाथ बोहरा, सेक्रेट्री ऑटोमोबाईल्स वर्कर्स यूनियन, विपुल लक्ष्मी बिल्डिंग, 375-376 हाथी चौक जालप, पुष्टिकर स्कूल के पीछे, जालोरी गेट के अन्दर, जोधपुर।

.....प्रार्थी

बनाम

इस्टेट डिफेंस ऑफिसर, इस्टेट डिफेंस ऑफिस, जोधपुर सर्किल ओल्ड पुलिस लाईन्स रोड, उम्मेद क्लब रोड, जोधपुर

.....अप्रार्थी

उपस्थित:

- (1) प्रार्थी प्रतिनिधि श्री श्रीनाथ बोहरा।
- (2) अप्रार्थीगण प्रतिनिधि श्री विनय जैन।

—:अधिनिर्णय:—

दिनांक:-22.05.2013

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक L-14012/7/2011-IR(DU) Dated 03.10-2011 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया है :

"Whether the action of the Management of Estate Defence Officer, Jodhpur Circle, Jodhpur in terminating the services of Shri Radhey Shyam s/o Shri Kashiram w.e.f. 18/06/2009 is legal and justified? What relief the workman is entitled to?"

2. प्रार्थी ने अपने माँग-पत्र में यह उल्लेख किया है कि उसने अप्रार्थी नियोजक के अधीन दैनिक वेतन भोगी श्रमिक के रूप में दिनांक 01.12.1992 से 18.06.2009 तक अपनी सेवाएँ दी। प्रार्थी का वेतन प्रारम्भ में 150/- रुपये प्रतिमाह था, बाद में दिनांक 29.08.1995 से उसका वेतन 225/- रुपये प्रतिमाह किया गया। प्रार्थी की ड्यूटी में अप्रार्थी नियोजक संस्थान में स्थित दो लेट्रीन बाथ व इस्टेट ऑफिसर के बंगले की लेट्रीन व बाथरूम साफ करना था। प्रार्थी ने उल्लेख किया है कि उसे वेतन का भुगतान पे वाउचर से किया जाता था व बाद में बैंक के जरिये चेक से वेतन का भुगतान किया जाने लगा तथा प्रार्थी की हाजरी रजिस्टर में 'पी' लगाकर दर्ज की जाती थी। प्रार्थी ने यह उल्लेख किया है कि उन दिनों प्रार्थी के वेतन की कुल रकम 2462/- बनाई जाती थी। ई०एस०आई० व ई०पी०एफ० की कटौती कर प्रार्थी को 2062/- रुपये का भुगतान किया जाता था।

3. प्रार्थी ने आगे उल्लेख किया है कि उससे जूनियर श्रमिक राजेश की सेवायें रेग्यूलराईज की गईं तब प्रार्थी ने भी निवेदन किया जिस पर प्रार्थी को बताया गया कि उसकी सेवायें भी रेग्यूलर करने की कार्यवाही चल रही है, लेकिन अप्रार्थी ने बाद में प्रार्थी की सेवायें रेग्यूलर करने से इन्कार कर दिया व प्रार्थी की सेवाओं में 'आर्टिफिसियल ब्रेक' कर अन्याय करने लगे तथा अप्रार्थी ने अपने पत्र दिनांक 04.01.1993 के जरिये प्रार्थी पर दबाव डाला कि प्रार्थी कभी भी केस नहीं करेगा। इस पर प्रार्थी ने दिनांक 01.05.2009 को सेवायें रेग्यूलर करने हेतु CAT में केस संख्या 113/2009 दायर किया। उक्त केस का नोटिस मिलने पर अप्रार्थी ने जवाब देने से पूर्व प्रार्थी की सेवाएँ मौखिक आदेश से दिनांक 18.06.2009 को समाप्त कर दीं जिसके परिणाम स्वरूप प्रार्थी का उक्त केस दिनांक 26.04.2010 को 'इन्फक्वयूस' हो गया।

4. प्रार्थी ने उल्लेख किया है कि उसे सेवामुक्त करने से पूर्व अप्रार्थी नियोजक द्वारा धारा 25 औद्योगिक विवाद अधिनियम, 1947 के प्रावधानों के अन्तर्गत छंटनी मुआवजा, नोटिस, नोटिस वेतन आदि का भुगतान नहीं किया गया। जिस पर प्रार्थी ने समझौता वार्ता हेतु प्रार्थना-पत्र प्रस्तुत किया। जहां भी अप्रार्थी ने प्रार्थी की सेवाएँ बहाल करने से मना कर दिया। जिस पर समझौता वार्ता को असफल घोषित किया गया। जिस पर यह रेफरेन्स इस न्यायालय को प्रेषित किया गया।

5. प्रार्थी ने उल्लेख किया है कि उसकी लगभग 18 साल की सेवाओं को गैर कानूनी तरीके से समाप्त करने के बाद अप्रार्थी ने अखबार में 'वेंकट पोस्ट' पर नौकरी देने हेतु विज्ञापन दिया व अन्य को नौकरी दे दी, जो श्रम कानूनों का उल्लंघन है। उक्त आधारों पर प्रार्थी ने प्रार्थना की है कि प्रार्थी की मौखिक आदेश दिनांक 18.06.2009 से की गई सेवा समाप्ति को निरस्त करते हुए प्रार्थी की सेवाएँ बहाल की जावें व प्रार्थी की सेवाएँ निरन्तर, अबाध व रेग्यूलर मानते हुए प्रार्थी को सवेतन मय एरियर व अन्य पारिणामिक लाभ अप्रार्थी से दिलाये जावें।

6. अप्रार्थी की ओर से प्रार्थी के माँग-पत्र का प्रत्युत्तर प्रस्तुत कर कहा गया है कि अप्रार्थी का कार्यालय भारत सरकार रक्षा मंत्रालय के अधीन है व वाणिज्यिक व औद्योगिक संस्थान नहीं है। अप्रार्थी पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते। प्रार्थी को अंशकालीन सफाई कर्मचारी के पद पर दिनांक 01.12.1992 से एक निश्चित लघु अवधि के लिए अप्रार्थी के कार्यालय क्षेत्र की सफाई, एक-दो घंटे प्रतिदिन कार्य करने हेतु सरकारी दर पर अस्थायी रूप से नियुक्त किया गया। प्रार्थी को कभी भी नियमित नियुक्ति नहीं दी गई। प्रार्थी की नियुक्ति पूरी तरह से आवश्यकता के अनुसार नियत समय के लिए की थी तथा नियत समय की समाप्ति के पश्चात् उसकी नियुक्ति स्वतः समाप्त हो जाती थी। उसके पश्चात् प्रार्थी अन्य जगह पर कार्य करने के लिये जाता था। अप्रार्थी ने उल्लेख किया है कि प्रार्थी ने अंशकालीन सफाई कार्य के लिए दिनांक 01.12.1992 से 18.06.2009 तक कभी भी कलेण्डर वर्ष के अनुसार एक साल में 240 दिन लगातार कार्य नहीं किया। प्रार्थी को भुगतान जितनी स्वीकृत राशि होती थी उसी अनुसार चेक द्वारा किया जाता था। प्रार्थी की ई०एस०आई० व ई०पी०एफ० कर कटौती नहीं की जाती थी।

7. अप्रार्थी ने आगे उल्लेख किया है कि प्रार्थी को 89 दिवस की स्वीकृति अंशकालीन सफाईकर्म के रूप में नियुक्त किया जाता था। प्रार्थी अंतिम बार दिनांक 14.10.2008 से 10.01.2009 तक की एक लघु अवधि हेतु अप्रार्थी विभाग के नियोजन में रहा तथा दिनांक 10.01.2009 के बाद प्रार्थी का नियोजन स्वतः ही समाप्त हो गया। प्रार्थी का यह कथन गलत है कि उसके द्वारा केन्द्रीय प्रशासनिक अधिकरण जोधपुर के समक्ष दायर वाद का नोटिस मिलने के बाद सेवाएँ मौखिक आदेश से समाप्त की गईं। प्रार्थी की सेवाएँ तो 10.01.2009 के बाद स्वतः की समाप्त हो गई थी। प्रार्थी ने वास्तविक तथ्यों को छिपाते हुए गलत तथ्यों के आधार पर केन्द्रीय प्रशासनिक अधिकरण के समक्ष प्रार्थना-पत्र संख्या 113/2009 दायर कर अनुचित लाभ प्राप्त करने का प्रयास किया, लेकिन अप्रार्थी द्वारा जवाब प्रस्तुत कर प्रार्थी के गलत तथ्यों को न्यायालय के समक्ष उजागर किया गया जिस पर प्रार्थी ने अपने प्रार्थना-पत्र को 'विड़ो' कर लिया।

8. अप्रार्थी ने यह भी उल्लेख किया है कि प्रार्थी पूर्णकालीन किसी अन्य संस्थान में कार्यरत था। प्रार्थी कभी भी बेरोजगार नहीं रहा न ही वर्तमान में बेरोजगार है। प्रार्थी को कभी भी दैनिक वेतन भोगी के रूप में नियुक्त नहीं किया गया। अतः प्रार्थी पर धारा 25 औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते। अप्रार्थी ने उल्लेख किया है कि अप्रार्थी कार्यालय द्वारा कार्य सुचारू रूप से चलाने के लिए अस्थायी अंशकालीन सफाई कर्मचारी की आवश्यकता हेतु विज्ञापन देना, न गैर कानूनी है न ही इसका प्रार्थी द्वारा प्रस्तुत वाद से संबंध है। उक्त आधारों

पर अप्रार्थी ने प्रार्थी का माँग-पत्र खारिज किये जाने का निवेदन किया।

9. प्रार्थी ने अपने माँग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्रार्थी से प्रतिपरीक्षा की गई। प्रार्थी की ओर से अपने पक्ष में विष्णु देव व सुनील के शपथ-पत्र भी प्रस्तुत किये गये जिनसे भी प्रतिपरीक्षा की गई। प्रार्थी की ओर से प्रलेखीय साक्ष्य में दैनिक आदेश द्वितीय प्रदर्श-1, अप्रार्थी का पत्र प्रदर्श-2, दैनिक आदेश द्वितीय प्रदर्श-3, हाजरी रजिस्टर प्रदर्श-4, 5, 6 व 7, चैक प्रदर्श-8, अप्रार्थी का पत्र प्रदर्श-9, प्रदर्श-10, नूतन रंजूमनी ट्रांसपोर्ट का प्रमाण-पत्र प्रदर्श-11, असफल वार्ता प्रतिवेदन प्रदर्श-12 व रेफरेन्स प्रदर्श-13 को पेश पर प्रदर्श करवाये गये। अप्रार्थी की ओर से श्री कौशल गौतम का शपथ-पत्र प्रस्तुत किया गया, जिससे भी प्रतिपरीक्षा की गई। अप्रार्थी की ओर से प्रलेखीय साक्ष्य में नूतन रंजूमनी ट्रांसपोर्ट का प्रमाण-पत्र प्रदर्श ए-1, केन्द्रीय प्रशासनिक अधिकरण का आदेश दिनांक 26.04.2010 प्रदर्श ए-2 को पेश का प्रदर्श करवाया गया।

10. बहस उभय-पक्ष सुनी गई प्रार्थी की ओर से प्रस्तुत लिखित बहस तथा पत्रावली का ध्यानपूर्वक अवलोकन किया गया।

11. विद्वान प्रतिनिधि प्रार्थी ने बहस के दौरान निवेदन किया है कि प्रार्थी ने अप्रार्थी नियोजक के अधीन दैनिक वेतन भोगी श्रमिक 'स्वीपर' के रूप में दिनांक 01.12.1992 से 18.06.2009 तक निरन्तर कार्य किया है। प्रार्थी द्वारा पूरे दिन कार्य किया जाता था। प्रार्थी द्वारा किये गये कार्य को स्वयं प्रार्थी व उसके साक्षीगण विष्णुदेव व सुनील ने अपने शपथ-पत्रों के माध्यम से सिद्ध किया है। उनका निवेदन है कि प्रार्थी को सर्वप्रथम 150/- रुपये माहवार वेतन दिया जाता था, जो समय-समय पर बढ़ाया गया व अन्त में उसका वेतन 2062/- रुपये प्रतिमाह था। उनका यह भी निवेदन है कि प्रार्थी ने अप्रार्थी नियोजक के अधीन लगातार दिनांक 01.12.1992 से 18.06.2009 तक कार्य किया है। लेकिन प्रार्थी की सेवा समाप्ति से पूर्व अप्रार्थी नियोजक द्वारा धारा 25-एफ, 25-जी व 25-एच औद्योगिक विवाद अधिनियम के प्रावधानों की पालना नहीं की गई। उनका निवेदन है कि प्रार्थी के द्वारा अपनी सेवाएँ 'रेग्यूलराईज' कराने के संबंध में केन्द्रीय प्रशासनिक अधिकरण में वाद प्रस्तुत किया जिसके नोटिस अप्रार्थी को मिलने पर अप्रार्थी ने प्रार्थी को मौखिक रूप से सेवापृथक् कर दिया। उनका यह भी निवेदन है कि प्रार्थी की ओर से जो मौखिक व दस्तावेजी साक्ष्य प्रस्तुत की गई है, उससे प्रार्थी का मामला पूर्णरूप से सिद्ध होता है। उनका यह भी निवेदन है कि प्रार्थी अन्य किसी संस्थान में कार्य नहीं कर रहा है। उनका निवेदन है कि प्रदर्श ए-1 अनुचित प्रभाव डालकर अप्रार्थी नियोजक ने प्राप्त किया है। उनका निवेदन है कि प्रदर्श ए-1 को जारी करने वाले संस्थान ने ही प्रदर्श-11 पत्र लिखकर उक्त बात को स्पष्ट कर दिया है। इसके अलावा उनका यह भी निवेदन है कि सेवा समाप्ति के बाद यदि प्रार्थी अपना जीवनयापन करने के लिए कुछ काम कर भी रहा हो तो उससे उसके इस प्रकरण पर कोई प्रभाव नहीं पड़ता है। अन्त में उन्होंने निवेदन किया कि प्रार्थी द्वारा माँगा गया अनुतोष उसे प्रदान किया जावे। प्रार्थी की ओर से अपने तर्कों के समर्थन में इस न्यायालय के श्रम विवाद संख्या 37/2007 भगाराम बनाम ब्लॉक प्रारम्भिक शिक्षा अधिकारी का अधिनिर्णय दिनांक 19.03.2012 पेश किया।

12. अप्रार्थी के विद्वान प्रतिनिधि ने बहस के दौरान निवेदन किया है कि अप्रार्थी नियोजक औद्योगिक संस्थान नहीं है। अतः उस पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। उनका यह भी निवेदन है कि प्रार्थी को अंशकालीन सफाई कर्मचारी के पद पर दिनांक 01.12.1992 से एक निश्चित लघु अवधि के लिए कार्यालय क्षेत्र की सफाई का कार्य एक-दो घंटे प्रतिदिन करने हेतु सरकारी दर पर अस्थाई रूप से नियुक्त किया गया था। उनका निवेदन है कि उक्त नियुक्ति पूरी तरह से आवश्यकता के अनुसार नियत समय के लिए थी तथा नियत समय की समाप्ति के पश्चात् उसकी नियुक्ति स्वतः समाप्त हो जाती थी। उन्होंने निवेदन किया कि अप्रार्थी ने प्रार्थी की नियुक्ति कभी भी नियमित रूप से नहीं की थी। उनका यह भी निवेदन है कि प्रार्थी ने 01.12.1992 से 18.06.2009 तक कभी भी किसी कलेण्डर वर्ष में लगातार 240 दिन कार्य नहीं किया। उनका यह भी निवेदन है कि प्रार्थी अंतिम बार दिनांक 14.10.2008 से 10.01.2009 तक की एक लघु अवधि हेतु अप्रार्थी विभाग के नियोजन में रहा तथा दिनांक 10.01.2009 के बाद प्रार्थी का नियोजन स्वतः ही समाप्त हो गया। उनका यह भी निवेदन है कि प्रार्थी ने केन्द्रीय प्रशासनिक अधिकरण में प्रार्थना-पत्र प्रस्तुत कर अनुचित लाभ प्राप्त करने का प्रयास किया परन्तु अप्रार्थी द्वारा उक्त प्रार्थना-पत्र का जवाब प्रस्तुत कर प्रार्थी द्वारा अंकित किये गये गलत तथ्यों को अधिकरण के समक्ष उजागर किया तो प्रार्थी ने अपना वाद 'विद्धो' करने का प्रार्थना-पत्र प्रस्तुत किया जिस पर केन्द्रीय प्रशासनिक अधिकरण ने प्रार्थी का वाद निरस्त किया। बहस के दौरान यह भी निवेदन किया कि सेवा समाप्ति के बाद प्रार्थी पूर्णकालीन किसी अन्य संस्थान में कार्यरत है। अन्त में उन्होंने निवेदन किया कि प्रार्थी का माँग-पत्र निरस्त किया जावे।

13. हमने दोनों पक्षों के तर्कों पर गम्भीरतापूर्वक विचार किया।

14. सर्वप्रथम इस प्रकरण में इस बाबत विचार करें कि अप्रार्थी नियोजक उद्योग है या नहीं। इस संबंध में माननीय राजस्थान उच्च न्यायालय की खण्डपीठ का निर्णय 2012 WLC (Raj.) UC 530 State of Rajasthan & Anr. vs The Labour Court Ajmer & Anr. अत्यन्त महत्वपूर्ण है। इस प्रकरण में माननीय राजस्थान उच्च न्यायालय के समक्ष यह विचारणीय बिन्दु था कि पुलिस विभाग में कार्यरत भिंशी (Waterman) श्रमिक की परिभाषा में आता है या नहीं। माननीय राजस्थान उच्च न्यायालय ने अनेकों न्यायिक दृष्टांतों का विस्तृत विवेचन करते हुए इस बात को कहा है कि बैंगलोर वाटर सप्लाय के मामले में बताये गये सिद्धांतों के परिप्रेक्ष्य में यह स्पष्ट है कि भिंशी का पद पुलिस विभाग में राज्य सम्प्रभु कृत्य (Sovereign function) से संबंधित नहीं है। माननीय राजस्थान उच्च न्यायालय की खंडपीठ ने समस्त तथ्यों व परिस्थितियों का विस्तृत विवेचन करते हुए इस मामले में उद्योग शब्द को परिभाषित करते हुए यह माना कि पुलिस विभाग में कार्यरत भिंशी (Waterman) श्रमिक है। यदि उक्त न्यायिक दृष्टांत के प्रकाश में वर्तमान मामले के तथ्यों व परिस्थितियों पर विचार करें तो वर्तमान मामले में भी लगभग वही परिस्थितियाँ सामने आती हैं जो उक्त न्यायिक दृष्टांत वाले मामले में थीं। इस प्रकार उपरोक्त न्यायिक दृष्टांत के परिप्रेक्ष्य में मेरे विनिर्णय में, वर्तमान मामले में प्रार्थी जिस अप्रार्थी नियोजक के अधीन 'स्वीपर' का

कार्य कर रहा था, वह वहां श्रमिक की परिभाषा में आता है। इस प्रकार से अप्रार्थी नियोजक का यह निवेदन खारिज किये जाने योग्य समझे जाने से खारिज किया जाता है कि अप्रार्थी नियोजक उद्योग की परिभाषा में नहीं आता है।

15. अब हम इस प्रकरण में इस बात पर विचार करेंगे कि प्रार्थी का कार्य किस प्रकार का रहा है। इस संबंध में साक्ष्य के अवलोकन से यह स्पष्ट है कि प्रार्थी, अप्रार्थी नियोजक के अधीन दिनांक 01.12.1992 से 18.06.2009 तक कार्यरत रहा है। अप्रार्थी नियोजक का जो जवाब है उसमें इस बात को कहा गया है कि यह सत्य है कि प्रार्थी इस कार्यालय में अंशकालीन सफाई कार्य के लिए दिनांक 01.12.1992 से 18.06.2009 तक कभी भी वर्ष कलेण्डर वर्ष के अनुसार एक साल में कभी भी 240 दिन लगातार कार्य नहीं किया। अप्रार्थी के उक्त कथन से एक बात तो यह स्पष्ट है कि प्रार्थी दिनांक 01.12.1992 से 18.06.2009 तक अप्रार्थी नियोजक में कार्यरत रहा है, लेकिन अप्रार्थी नियोजक का अब केवल यह कहना है कि प्रार्थी ने कभी भी एक वर्ष में 240 दिन तक लगातार कार्य नहीं किया। इस संबंध में एक बात यह स्पष्ट हो जाती है कि प्रार्थी ने वर्ष 1992 से 2009 तक लगभग 17 वर्ष तक अप्रार्थी नियोजक के अधीन कार्य किया है।

16. अप्रार्थी नियोजक की ओर से प्रस्तुत जवाब व साक्ष्य को देखें तो अप्रार्थी नियोजक का एक तरफ यह कहना है कि प्रार्थी को कभी 89 दिन से ज्यादा नियुक्ति नहीं दी गई। दूसरी तरफ इस संबंध में प्रदर्श-1 प्रार्थी का नियुक्ति-पत्र है, जिसमें प्रार्थी को दिनांक 14 दिसम्बर 1992 को 150/- रुपये प्रतिमाह पर अंशकालीन सफाई वाला के पद पर दिनांक 01.12.1992 से 31.05.1993 तक नियुक्त किया गया है। इस नियुक्ति-पत्र से एक बात यह भी स्पष्ट है कि प्रार्थी को रोजाना मजदूरी के हिसाब से नियुक्त नहीं किया जाकर प्रतिमाह के हिसाब से नियुक्त किया गया था। इस नियुक्ति-पत्र से अप्रार्थी नियोजक का यह कथन भी झूठा साबित हो जाता है कि प्रार्थी को केवल 89 दिन के लिए ही नियुक्ति दी जाती थी। इस संबंध में प्रदर्श-2 पत्र में भी इस बात को कहा गया है कि रोजगार कार्यालय से बात करने पर 150/- रुपये प्रतिमाह पर कार्य करने को कोई तैयार नहीं है। प्रार्थी की ओर से अपनी साक्ष्य में प्रदर्श-4, प्रदर्श-5, प्रदर्श-6 व प्रदर्श-7 हाजिरी रजिस्टर की प्रतियां प्रस्तुत की गई हैं जिन पर प्रार्थी के नाम के अलावा अन्य कर्मचारियों के नाम भी लिखे हुए हैं। इन उपस्थिति रजिस्टर के अवलोकन से यह प्रकट होता है कि प्रार्थी ने पूरे माह ही कार्य किया है। यहां तक कि 26, जनवरी, 15 अगस्त की तारीखों पर भी प्रार्थी के हस्ताक्षर मौजूद हैं। इस प्रकार से यह सामने आता है कि प्रार्थी रोजाना मजदूरी की शर्त पर कार्य नहीं कर प्रतिमाह के हिसाब से कार्यरत था। प्रदर्श-9 के अवलोकन से भी यह सामने आता है कि प्रार्थी को दैनिक वेतन भोगी सफाई कर्मचारी बताया गया है और उसे 14.11.2008 से 13.12.2008 तक एक माह का वेतन 2062/- दिया गया है। अब यदि अप्रार्थी की साक्ष्य को देखें तो अप्रार्थी का साक्षी कौशल गौतम प्रतिपरीक्षा में कहता है कि रिकार्ड के अनुसार कार्यालय में एक ही 'स्वीपर' था। यह साक्षी कहता है कि प्रार्थी राधेश्याम दिसम्बर, 1992 में नियुक्त हुआ था। अन्त में मार्च 2009 में आना बन्द हुआ। जबकि दूसरी तरफ अप्रार्थी अपने जवाब व शपथ-पत्र में यह कहकर आया है कि दिनांक 10.01.2009 के बाद प्रार्थी श्रमिक का नियोजन समाप्त हो गया। इस प्रकार से अप्रार्थी स्वयं की साक्ष्य विरोधाभासी हैं और अप्रार्थी की साक्ष्य से यह स्पष्ट है कि अप्रार्थी स्वयं सेवामुक्ति की

तारीख गलत बता रहे हैं। इसके अलावा जब अप्रार्थी यह कहकर आये हैं कि यह सही है कि दिनांक 01.12.1992 से 18.06.2009 तक प्रार्थी ने इस कार्यालय में अंशकालीन सफाई कार्य के लिए एक वर्ष में 240 दिन कार्य नहीं किया। इस बात से यह स्पष्ट है कि अप्रार्थी इस बात का मानता है कि प्रार्थी 18.06.2009 तक अप्रार्थी के यहां कार्यरत था। इस प्रकार से भी प्रार्थी की सेवामुक्ति की तारीख अप्रार्थी बार-बार गलत बता रहे हैं। अप्रार्थी के साक्षी कौशल गौतम ने इस बात को स्वीकार किया है कि प्रार्थी को सर्वप्रथम 6 माह के लिए लगाया था।

17. अप्रार्थी के द्वारा प्रार्थी को पार्टटाईम रखे जाने की बात कही गई है। इस संबंध में प्रार्थी के द्वारा प्रस्तुत श्रम विवाद संख्या 37/2007 भगाराम बनाम ब्लॉक प्रारम्भिक शिक्षा अधिकारी का अधिनिर्णय दिनांक 19.03.2012 में न्यायिक दृष्टि Divisonal Manager New India Assurance Co. Ltd. V.A. Sankaralingam 2009 Lab.I.C. Page 151, Kan Singh V. District Ayurved Officer and others (2012 (132) FLR 570) o State & Ors. V Giriraj Prasad & another 2008 Western Law Cases (Raj) UC Page 730 का उल्लेख किया गया है जिसमें इस बात को कहा गया है कि पार्टटाईम श्रमिक/कर्मचारी भी श्रमिक की परिभाषा में आता है और उसे धारा 25-बी व 25-एफ औद्योगिक विवाद अधिनियम, 1947 की सुरक्षा प्राप्त है।

18. सेवामुक्ति से पूर्व के एक वर्ष में 240 दिन कार्य करने के संबंध यह सुस्थापित विधि है कि प्रार्थी का यह दायित्व होता है कि प्रार्थी को इन तथ्यों का प्रमाणित करना होता है। वर्तमान मामले में जब प्रार्थी ने इस बात को दस्तावेजी साक्ष्य से प्रमाणित कर दिया है कि उसे प्रतिमाह के हिसाब से नियुक्ति दी गई थी और विभिन्न उपस्थिति रजिस्टर व प्रदर्श-9 से भी यह तथ्य प्रमाणित कर दिया गया है कि प्रार्थी प्रतिमाह के हिसाब से ही अप्रार्थी नियोजक के अधीन नियुक्त था मेरे विनम्र मत में प्रार्थी ने अपने जिम्मे का भार सिद्ध कर दिया है। अप्रार्थी नियोजक यह कहकर आये हैं कि प्रार्थी को 89 दिन के लिए रखा जाता था अथवा प्रार्थी ने कभी भी 240 दिन एक वर्ष में कार्य नहीं किया, लेकिन इस संबंध में अप्रार्थी के द्वारा कोई दस्तावेजी साक्ष्य अभिलेख पर प्रस्तुत नहीं की गई है, जिससे अप्रार्थी के विरुद्ध निष्कर्ष निकाला जा सकता है। न्यायिक दृष्टि Joseph Thomas V. The Judge, Labour Court, Jodhpur & Ors. S.B. CIVIL Writ Petition No. 7136/2005 Date of Order : 19th December, 2008 के मामले में माननीय राजस्थान उच्च न्यायालय ने इस बात को कहा है कि श्रमिक 5 वर्ष से अप्रार्थी से यहां कार्यरत है उसे रहने को मुफ्त आवास व भोजन भी दिया गया है, समस्त परिस्थितियों में हर वर्ष सेवा बढ़ाने का आदेश केवल इसीलिए जारी किया गया है कि ताकि श्रमिक के मामले में औद्योगिक विवाद अधिनियम के प्रावधान लागू न हो सकें। माननीय उच्च न्यायालय ने इस unfair labour practice माना। इस न्यायिक दृष्टि में पूर्व न्यायिक दृष्टियों का उल्लेख करते हुए माननीय राजस्थान उच्च न्यायालय ने यह भी कहा कि न्यायालय को परदे का उठाकर वास्तविकता को देखना चाहिए। उक्त मत निम्न शब्दों में व्यक्त किया गया।

A Division Bench of Allahabad High Court in Shailendra Nath Shukla and others v. Vice-Chancellor, Allahabad

University and others, reported in 1987 Lab. I.C. 1607, while dealing with a similar question as involved in this petition for writ, held as follow:—

"Terminations which are included in its are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly, a workman employed for a stipulated period of completion of work whichever may be earlier may be covered in this clause. But if contractual employment is resorted to as mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreement shall have to be tested on anvil of fairness and bona fide. An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if its is left to employer not to renew contract whenever he likes irrespective of any circumstance then the protection afforded to a workman by treating every termination of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceased to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice".

A Division Bench of this Court in *Bheem Raj. v. Uttariya Rajasthan Sahkari Dugdh Utpadak Sangh Ltd., Bikaner & Vice-Versa*, reported in 2000(3) WLN 690, opined that:

"merely writing in the order, a fix term of appointment by itself is not a conclusive proof of the fact that it is a fixed term employment. It depends on facts and circumstances of each case whether the employment offered was for a fix term or was only as a device to avoid the applicability of the beneficial provisions of the Industrial Dispute Act ensuring against arbitrary hire and fire principal adopted by the employments (employers). It is always open for adjudicatory body to lift the veil of the real transactions and if it comes to the latter conclusion the provisions of Section 2 (oo) (bb) could not be

attracted. In these circumstances, essentially in each cases this being a finding of fact would not be ordinarily subjected to the judicial review."

In *Alcobex Metals Ltd. v. State of Rajasthan & Qrs.*, reported in 2004 WLC(Raj). UC 260, a Division Bench of this Court held that the Labour Court is required to examine the real nature of work and termination of the employee concerned. if any exemption is claimed in view of the provisions of clause (bb) of Section 2 (oo) of the Act of 1947. In the case aforesaid the Division Bench held as follows:—

"33. It cannot be said that whenever workmen raised dispute about real nature of employment and real nature of termination, it can be frustrated solely by showing termination order embedded in order of appointment.

The appointment ostensibly satisfying the provisions of Section 2 (oo) (bb) in such cases becomes a matter of industrial adjudication. Whether the appointment in the first instance itself was bonafide for a fixed term or was a mere camouflage to release the employer from obligations arising under the Industrial Disputes Act. Such a dispute raised can only be solved by adjudication on the basis of material that may come before the Adjudicating Authority during the course of such proceedings."

"In the present case the Labour Court made no effect to examine real nature of the duties discharged by the petitioner, the real nature of termination effected by the employer and the real reason to execute service agreement year by year. The provisions of Section 2 (oo) (bb) of the Act of 1947 cannot be utilised by an employer to victimise a workman by way of discharge. The clause (bb) of Section 2 (oo) of the Act of 1947 comes into picture only where a person is employed for a work of intermittent nature for a short term under an agreement. If any employer executes service agreement in terms relating to paralian nature of work only with view to keep the workman at a disadvantageous position with a view to avoid the applicability of the condition precedents for effecting a valid retrenchment, then that shall be nothing but an unfair labour practice which is prohibited as per the provisions of Section 25-T of the Act of 1947. Such type of termination is a discharge simplicitor from service by way of victimisation."

"As said above, the petitioner remained in employment for five years and his services were utilised by the employer as a regular staff. The petitioner was also entitled for the residential accommodation and meals as given to the students. Before employing the petitioner as Electrician-cum-Plumber a process of selection was also conducted

and appointment was given to him against a vacant post. This factual position available in instant matter establishes it well that the petitioner was employed to discharge a paralian work and he was having a relationship of workman with the employer. The service agreements were executed year by year by the employer only with view to deprive the petitioner from protection of the provisions of the Act of 1947 while effecting retrenchment. It is really unfortunate that the Jawahar Navodaya Vidyalaya, that is an agency of the State adopted a practice against the thrust and will of a statute and also contrary to a public policy of a welfare state. A citizen of our country expects fair approach atleast from the government and its agencies, thus, such agencies should act fairly and should prove themselves as model employer."

19. उक्त न्यायिक दृष्टांतों में सुस्थापित विधि के प्रकाश में वर्तमान मामले को देखें को उपरोक्त विवेचन के आधार पर यह स्पष्ट हो जाता है कि प्रार्थी को औद्योगिक विवाद अधिनियम के प्रावधानों की पालना करते हुए सेवामुक्त नहीं किया गया है। पत्रावली पर उपलब्ध साक्ष्य से यह स्पष्ट है कि प्रार्थी को सेवामुक्ति से पूर्व नोटिस, नोटिस वेतन अथवा छंटनी मुआवजा नहीं दिया गया। साक्ष्य से यह भी स्पष्ट है कि प्रार्थी की सेवा 1992 से 2009 तक करीब 17 वर्ष लगातार रही है। अप्रार्थी नियोजक ने कार्य दिवसों के संबंध में कोई दस्तावेजी साक्ष्य पेश नहीं की है, जिससे उनके विरुद्ध निष्कर्ष निकाला जा सकता है। इस प्रकार से यह स्पष्ट है अप्रार्थी के द्वारा धारा 25-एफ औद्योगिक विवाद अधिनियम की पालना नहीं की गई है।

20. अप्रार्थी के साक्षी कौशल गौतम ने अपनी साक्ष्य में प्रवीण कुमार को 'स्वीपर' के पद पर नियुक्त करने की बात कही है। यद्यपि उसकी नियुक्ति तारीख यह साक्षी नहीं बता सका है। इस साक्षी के अनुसार कार्यालय में केवल एक ही 'स्वीपर' था। इस साक्षी ने इस बात को भी कहा है कि अभी हमारे विभाग में कार्यरत 'स्वीपर' फुल टाइम टेम्प्रेरी 89 दिन के लिए रखा गया है। यह बात सही है कि जब उसका पार्ट टाइम आदेश जारी हुआ तथा प्रार्थी का केस चल रहा था। इस प्रकार यह स्पष्ट है कि अप्रार्थी नियोजक ने प्रवीण कुमार की नियुक्ति से पूर्व प्रार्थी को सेवा में पुनर्स्थापित (re-employment) करने हेतु न तो कोई नोटिस दिया न ही उसे पुनः सेवा में रखने का प्रयास किया। इस प्रकार से अप्रार्थी नियोजक द्वारा औद्योगिक विवाद अधिनियम की धारा 25-एच व राजस्थान औद्योगिक विवाद नियम के नियम 78 का उल्लंघन किया जाना भी प्रमाणित होता है।

21. उपरोक्त विवेचन के आधार पर यह प्रमाणित हो जाता है कि प्रार्थी को अप्रार्थी नियोजक द्वारा दिनांक 18.06.2009 के अवैध तरीके से सेवामुक्त किया गया है। प्रार्थी ने अप्रार्थी नियोजक के अधीन करीब 17 वर्ष तक लगातार कार्य किया है। अप्रार्थी नियोजक के पास प्रार्थी हेतु कार्य भी उपलब्ध हैं। अतः इस प्रकरण की समस्त परिस्थितियों में व उपरोक्त वर्णित सुस्थापित विधि के प्रकाश में प्रार्थी को रेफरेंस की दिनांक 03.10.2011 से सेवा में पुनर्स्थापित किए जाने की तिथि तक

25 प्रतिशत पूर्वभूति (back wages) सहित व पूर्व सेवा में निरन्तरता सहित सेवा में पुनर्स्थापित किए जाने के आदेश दिया जाना उचित है।

—:अधिनिर्णय:-

22. अतः यह अधिनिर्णीत किया जाता है कि:—

- (1) प्रार्थी श्रमिक राधेश्याम पुत्र श्री काशीराम को अप्रार्थी नियोजक इस्टेट डिफेंस ऑफिसर, इस्टेट ऑफिस, जोधपुर द्वारा दिनांक 18.06.2009 से सेवामुक्त करना अनुचित एवं अवैध है।
- (2) अप्रार्थी नियोजक इस्टेट डिफेंस ऑफिसर, इस्टेट डिफेंस ऑफिस, जोधपुर प्रार्थी श्रमिक राधेश्याम पुत्र श्री काशीराम को तुरन्त प्रभाव से सेवा में पुनर्स्थापित करे। प्रार्थी की सेवायें निरन्तर मानी जावेंगी।
- (3) प्रार्थी श्रमिक राधेश्याम पुत्र श्री काशीराम रेफरेंस की दिनांक 03.10.2011 से सेवा में पुनर्स्थापित किए जाने की तिथि तक 25 प्रतिशत पूर्वभूति (back wages) अप्रार्थी नियोजक से प्राप्त करने का अधिकारी घोषित किया जाता है।

23. इस अधिनिर्णय को प्रकाशनार्थ भारत-सरकार को प्रेषित किया जावे।

24. यह अधिनिर्णय मेरे द्वारा लिपिबद्ध करवाया जाकर आज दिनांक 22.05.2013 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

अनूप कुमार सक्सैना, न्यायाधीश

नई दिल्ली, 2 जुलाई, 2015

का.आ. 1365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आकाशवाणी एवं दूरदर्शन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं न्यायालय, जोधपुर के पंचाट (संदर्भ संख्या 03/05) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2015 को प्राप्त हुआ था।

[सं. एल-42012/126/2000-आईआर(डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd July, 2015

S.O. 1365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 03/05) of the Industrial Tribunal Cum -Labour Court, Jodhpur now as shown in the Annexure in the industrial Dispute between the employers in relation to the management of the Chief Engineer (North Zone), Akashwani and Doordarshan and their workmen, which was received by the Central Government on 30/06/2015.

[No. L-42012/126/2000-IR (DU)]

P. K. VENUGOPAL, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण

एवं

श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी : श्री अनूप कुमार सक्सैना,
आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) संख्या: 03/2005

श्री बाबूखां पुत्र श्री सगते खां, जाति-मुसलमान,
निवासी-रामगढ़, तहसील-जैसलमेर, जिला-जैसलमेर
(राज.)

.... प्रार्थी

बनाम

1. केन्द्र अभियन्ता, दूरदर्शन केन्द्र, प्रसार भारती, उच्च शक्ति प्रेषित्र, जैसलमेर।
2. मुख्य अभियन्ता (उत्तरी क्षेत्र) आकाशवाणी एवं दूरदर्शन जामनगर हाऊस, शाहजहां रोड, नई दिल्ली।

.... अप्रार्थीगण

उपस्थित:

- (1) प्रार्थी प्रतिनिधि श्री मदन पुरोहित।
- (2) अप्रार्थी प्रतिनिधि श्रीमती शशिलता मित्तल।

-:अधिनिर्णय:-

दिनांक 18.04.2013

1. श्रम मंत्रालय, भारत सरकार ने अपनी अधिसूचना क्रमांक L-42012/126/2000-IR (DU) New Delhi dated 12.01.2005 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया है:-

"Whether the action of the management of Chief Engineer (North Zone), Akashwani and Doordarshan in terminating the services of Shri Babu Khan S/o Shri Sangte Khan w.e.f 15.11.1994 is just, fair and legal? If not, to what relief the concerned workman is entitled?"

2. प्रार्थी ने अपने मांग-पत्र में यह अभिकथित किया है कि प्रार्थी अप्रार्थी सं. 1 के जैसलमेर स्थित उच्च शक्ति प्रेषित्र (High Power Transmitter) पर केन्द्र अभियन्ता के अधीन ड्राईवर के पद पर कार्यरत था। प्रार्थी ने उल्लेख किया है कि उसने अपने अप्रार्थीगण के अधीन दिनांक 01.01.1992 से 1994-95 तक कुल मिलाकर दो साल से अधिक निरन्तर कार्य किया है। प्रार्थी कुशल कामगार की श्रेणी में आता है। प्रार्थी को प्रतिमाह 3000/- रुपये वेतन देय था। प्रार्थी ने उल्लेख किया है कि दिनांक 06.06.1994 को अप्रार्थी ने बिना कोई कारण बताए प्रार्थी को बिना सुनवाई का मौका दिये मौखिक रूप से सेवा से

पृथक कर दिया। सेवापृथकता से पूर्व कोई नोटिस या नोटिस अवधि का वेतन नहीं दिया गया।

3. प्रार्थी ने आगे उल्लेख किया है कि सेवापृथकता से पूर्व उसे न तो कोई आरोप-पत्र दिया गया न ही कोई विभागीय जांच की गई और केवल मौखिक तौर पर सेवाएं समाप्त कर दी गई। प्रार्थी ने उल्लेख किया है कि सेवा अवधि को दौरान सेवाएं सन्तोषप्रद रही। उसने अप्रार्थीगण के अधीन एक वर्ष के दौरान 240 दिन की सेवा अवधि पूर्ण कर ली थी, इसलिये उसे बिना विधिक प्रक्रिया अपनाए सेवा से पृथक नहीं किया जा सकता था। प्रार्थी ने उल्लेख किया है कि अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम की धारा 25-एफ के प्रावधानों का उल्लंघन किये जाने के कारण प्रार्थी पुनः पूर्ववत ड्राईवर के पद पर कार्य करने का अधिकारी है तथा सेवापृथक किये जाने से पुनः नियोजन में रखे जाने की दिनांक तक के पिछले वेतन व अन्य परिलाभ प्राप्त करने का अधिकारी है। यह भी उल्लेख किया है कि औद्योगिक विवाद अधिनियम के प्रावधानों के तहत सेवा में प्रमोशन एवं अन्य परिलाभों को भी प्राप्त करने का अधिकारी है।

4. उक्त आधारों पर प्रार्थी ने निवेदन किया है कि प्रार्थी को अवैध रूप से सेवा से पृथक किये जाने की दिनांक से पुनः सेवा में रखे जाने की दिनांक का समस्त वेतन दिलाया जावे तथा अन्य परिलाभ भी दिलाये जावें।

5. अप्रार्थीगण ने अपने प्रत्युत्तर में प्रारम्भिक आपत्तियों में कहा है कि प्रार्थी द्वारा यह प्रार्थना-पत्र अत्यन्त देरी से प्रस्तुत किया गया है। अप्रार्थी द्वारा दिनांक 15.11.1994 को प्रार्थी की सेवायें समाप्त की गई होती तो प्रार्थी तुरन्त ही न्यायालय की शरण में आता, लेकिन प्रार्थी ने लम्बी अवधि के पश्चात् यह विवाद उठाया है एवं अनुचित लाभ प्राप्त करने का प्रयास किया है। यह भी उल्लेख किया है कि प्रार्थी स्वयं अपने अधिकारों के प्रति जागरूक नहीं है। प्रार्थी द्वारा विवाद अत्यधिक विलम्ब से प्रस्तुत किये जाने के कारण चलने योग्य नहीं है। प्रार्थी ने विलम्ब का कोई सन्तोषजनक स्पष्टीकरण भी नहीं दिया है। अतः उक्त आधार पर प्रार्थी का मांग-पत्र निरस्त किये जाने योग्य है।

6. आगे प्रत्युत्तर में उल्लेख किया है कि प्रार्थी को अप्रार्थीगण के अधीन ड्राईवर के पद पर जैसलमेर स्थित उच्च शक्ति प्रेषित्र केन्द्र अभियन्ता के अधीन नियुक्त नहीं किया गया बल्कि वास्तव में प्रार्थी को आकस्मिक ड्राईवर के तौर पर पूर्णतया अस्थायी तौर पर केन्द्र के निर्माण तक उच्च शक्ति प्रेषित रामगढ़ पर लगाया गया था। प्रार्थी को पूर्णतया अस्थायी तौर पर 01.01.1992 से 12.10.1992 तक सीमित अवधि अथवा प्रोजेक्ट पूरा होने तक जो भी पहले हो, तक के लिए कार्य पर लगाया गया था। इस तथ्य को भी अस्वीकार किया है कि प्रार्थी ने 01.01.1992 से लेकर 1994-95 तक लगातार व निरन्तर दो वर्ष से अधिक समय तक कार्य किया। वास्तव में प्रार्थी को 01.01.1992 से 12.10.1992 तक आकस्मिक श्रमिक के तौर पर तथा उसके पश्चात् 13.10.1992 से 15.11.1994 तक वर्कचार्ज कर्मचारी के तौर पर कार्य पर लगाया गया था। प्रार्थी ने अप्रार्थीगण के अधीन कभी भी निरन्तर व लगातार कार्य नहीं किया। यह उल्लेख किया है कि कार्य की आवश्यकता के आधार पर ही प्रार्थी से कार्य लिया जाता था।

7. अप्राथी ने उल्लेख किया है कि प्राथी से लिया गया कार्य नियमित प्रकृति का नहीं था बल्कि अप्राथीगण का कार्य केवल उच्च शक्ति प्रेषिण केन्द्र के निर्माण तक ही था। अप्राथीगण के अधीन न तो ड्राईवर का कोई पद स्वीकृत था न ही अप्राथीगण को नियमित ड्राईवर की कोई आवश्यकता ही थी। केवल उच्च शक्ति प्रेषिण केन्द्र का निर्माण के दौरान अत्यावश्यक कार्य के निष्पादन के उद्देश्य से प्राथी को कार्य पर लगाया गया था तथा केन्द्र का निर्माण पूर्ण हो जाने पर अप्राथीगण का कार्य समाप्त हो गया। अतः प्राथी की सेवायें उसे मुआवजा राशि व छंटनी राशि प्रदान कर विधिवत् समाप्त कर दी गई।

8. यह भी उल्लेख किया है कि प्राथी को 3000/- रुपये मासिक वेतन नहीं दिया जाता था बल्कि 01.01.1992 से 12.10.1992 तक आकस्मिक श्रमिक के तौर पर 38.45 रुपये प्रतिदिन की दर से मजदूरी दी जाती थी तथा दिनांक 13.10.1992 के पश्चात् सेवा समाप्ति तक उसे वर्कचार्ज कर्मचारी के तौर पर 950-20-1150-20-1500 वेतनमान से आरम्भिक वेतन 950/- रुपये स्वीकार्य भत्ते देय थे। इस तथ्य को गलत बताया है कि प्राथी की सेवायें दिनांक 06.06.1994 को मौखिक रूप से समाप्त की गई। वास्तव में प्राथी की सेवायें जरिये पत्र दिनांक 13.17.94/प्रशा. आई दिनांक 13.10.94 के द्वारा दिनांक 15.11.1994 तक बढ़ाई गई तत्पश्चात् प्राथी की सेवायें दिनांक 15.11.1994 से विधिवत् छंटनी मुआवजा 2106/- रुपये देकर समाप्त की गई जिसे प्राथी ने प्राप्त किया है। प्राथी ने तथ्यों को छिपाया है व स्वच्छ हाथों से नहीं आया है।

9. अप्राथीगण ने उल्लेख किया है कि प्राथी ने अप्राथीगण के अधीन 240 दिन लगातार कार्य नहीं किया। बल्कि प्राथी से आवश्यकता के आधार पर ही कार्य लिया जाता था क्योंकि अप्राथीगण का कार्य उच्च शक्ति प्रेषिण केन्द्र के निर्माण तक ही था और उसके पश्चात् कार्य समाप्ति पर विधिक प्रक्रिया अपनाते हुए प्राथी की सेवा समाप्त की गई। अप्राथीगण द्वारा औद्योगिक विवाद अधिनियम की धारा 25-एफ या अन्य किसी प्रावधान का उल्लंघन नहीं किया गया। प्राथी पुनः नियुक्ति पाने का अधिकारी नहीं है। उक्त आधारों पर अप्राथीगण ने निवेदन किया है कि प्राथी का मांग-पत्र स्वयं निरस्त किया जाये।

10. प्राथी ने अपने मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्राथी से प्रतिपरीक्षा की गई। प्राथी की ओर से प्रलेखीय साक्ष्य में कार्यालय आदेश दिनांक 23.11.1992 प्रदर्श-1, ज्ञापन प्रदर्श-2, अप्राथीगण द्वारा प्राथी को साक्षात्कार हेतु प्रेषित पत्र प्रदर्श-3, प्राथी का ड्राइविंग लाइसेन्स प्रदर्श-4, प्रमाण-पत्र प्रदर्श-5, क्षतिपूर्ति राशि स्वीकृति आदेश प्रदर्श-6, माननीय राज. उच्च न्यायालय का एस.बी. सिविल रिट याचिका संख्या 3934/2002 बाबूखा बनाम भारत संघ में पारित आदेश दिनांक 03.12.2004 प्रदर्श-7 को पेश कर प्रदर्श करवाये गये। अप्राथीगण की ओर से श्री जे. पी. अग्रवाल का शपथ-पत्र प्रस्तुत किया गया। इस साक्षी से प्रतिपरीक्षा की गई। अप्राथीगण की ओर से प्रलेखीय साक्ष्य में श्रम मंत्रालय का पत्र प्रदर्श-1, प्राथी को क्षतिपूर्ति की राशि स्वीकृति आदेश प्रदर्श-2, ज्ञापन प्रदर्श-3, प्राथी का 13.10.92 से 31.12.92 तक नियुक्ति आदेश प्रदर्श-4, सेवा अवधि 15.11.1994 तक बढ़ाने का अप्राथीगण का आदेश प्रदर्श-5, प्राथी को क्षतिपूर्ति की राशि स्वीकृति आदेश प्रदर्श-6, वाउचर प्रदर्श-7 व वेतन बिल की प्रति प्रदर्श-8 को पेश कर प्रदर्श करवाये गये।

11. बहस उभय-पक्ष सुनी गई। पत्रावली का ध्यानपूर्वक अवलोकन किया गया।

12. बहस के दौरान विद्वान प्रतिनिधि प्राथी की ओर से निवेदन किया गया है कि प्राथी ने अप्राथीगण के अधीन 01.01.1992 से 1994-95 तक लगातार दो साल से अधिक समय तक ड्राईवर के पद पर निरन्तर कार्य किया है तथा सेवा समाप्ति से पूर्व के वर्ष में लगातार 240 दिन से अधिक सेवा अवधि पूर्ण कर ली, लेकिन इसके बावजूद भी अप्राथीगण ने प्राथी को औद्योगिक विवाद अधिनियम की धारा 25-एफ के प्रावधानों के अंतर्गत एक माह का नोटिस, नोटिस वेतन व छंटनी मुआवजा अदा नहीं किया व धारा 25-एफ के प्रावधानों का उल्लंघन करते हुए प्राथी को सेवामुक्त कर दिया गया। उनका यह भी निवेदन है कि सेवा समाप्ति से पूर्व प्राथी को कोई आरोप-पत्र नहीं दिया न ही कोई जांच की गई। इस प्रकार से उन्होंने प्राथी के पक्ष में प्राथी द्वारा मांगा गया अनुतोष प्रदान किये जाने का निवेदन किया। प्राथी प्रतिनिधि ने अपने तर्कों के समर्थन में न्यायिक दृष्टंत **Ramesh Kumar V. State of Haryana (2010) 2 Supreme Court Cases 543** प्रस्तुत किया, जिसका अवलोकन किया गया।

13. योग्य प्रतिनिधि अप्राथीगण की ओर से निवेदन किया गया है कि प्राथी ने अपना विवाद अत्यधिक विलम्ब से प्रस्तुत किया है। यह भी निवेदन है कि प्राथी को 01.01.1992 से 12.10.1992 तक आकस्मिक श्रमिक के तौर पर तथा उसके पश्चात् 13.10.1992 से 15.11.1994 तक वर्कचार्ज कर्मचारी के तौर पर कार्य पर लगाया गया। उनका निवेदन है कि प्राथी से लिया गया कार्य नियमित प्रकृति का नहीं था बल्कि अप्राथीगण का कार्य केवल उच्च शक्ति प्रेषिण केन्द्र के निर्माण तक ही था। उनका यह भी निवेदन है कि अप्राथीगण के अधीन न तो ड्राईवर का कोई पद स्वीकृत था न ही अप्राथीगण को ड्राईवर की नियमित आवश्यकता थी। केवल उच्च शक्ति प्रेषिण केन्द्र का निर्माण के दौरान अत्यावश्यक कार्य के निष्पादन के उद्देश्य से प्राथी को कार्य पर लगाया गया था व केन्द्र का निर्माण पूर्ण हो जाने पर अप्राथीगण का कार्य समाप्त हो गया अतः प्राथी की सेवायें उसे मुआवजा राशि व छंटनी राशि प्रदान कर विधिवत् रूप से समाप्त की गई है। उनका यह भी निवेदन है कि अप्राथीगण द्वारा औद्योगिक विवाद अधिनियम की धारा 25-एफ या अन्य किसी प्रावधान का उल्लंघन नहीं किया गया। प्राथी पुनः नियुक्ति प्राप्त करने का अधिकारी नहीं है। उन्होंने निवेदन किया कि प्राथी का मांग-पत्र खारिज किया जावे।

14. हमने दोनों पक्षों के तर्कों पर गंभीरतापूर्वक विचार किया।

15. सर्वप्रथम उभयपक्ष की साक्ष्य को देखें तो इस संबंध में प्राथी ने अपने मांग-पत्र तथा शपथ-पत्र में यह कहा है कि उसे अप्राथीगण के अधीन दिनांक 01.01.1992 को ड्राईवर के पद पर नियुक्त किया गया था तथा उसने 01.01.1992 से लगातार वर्ष 1994-95 तक दो साल से अधिक निरन्तर कार्य किया। यह भी कहा है कि अप्राथीगण ने दिनांक 06.06.1994 को बिना कोई कारण बताये प्राथी को मौखिक रूप से सेवा से पृथक् कर दिया। प्राथी ने यह भी कहा है कि उसे सेवापृथक् करने से पूर्व नोटिस या नोटिस का वेतन नहीं दिया। प्रतिपरीक्षा ने प्राथी ने कहा है कि मुझे सर्वप्रथम 01.01.1992 को ड्राईवर के पद पर लिखित आदेश से लगाया। आदेश अस्थायी हो तो इसकी मुझे जानकारी नहीं है। मैं दूरदर्शन विभाग में लगा था। गाड़ी सामान लेने के लिए जैसलमेर आती

थी। जब मैं ड्राइविंग का काम करता था उस समय जैसलमेर का कोई ड्राइवर नहीं था। दिल्ली का ड्राइवर था। यह बात सही है कि वहां पर परमानेंट ड्राइवर नहीं था। अजखुद ने कहा कि वहां ड्राइवर की परमानेंट पोस्ट थी। यह कहना गलत है कि मुझे परमानेंट न लगाया हो। मेरी हाजरी हाजरी रजिस्टर में लगती थी। मुझे मासिक वेतन 3000/- रुपये मिलता था। उक्त भुगतान मैंने दो साल से अधिक लिया था। यह कहना गलत है कि मुझे प्रोजेक्ट में लगाया गया हो। यह कहना गलत है कि मुझे आकस्मिक काम के लिए रखा हो। मुझे शुरू में डेली वैजेज पर रखा था बाद में मेरा पेमेन्ट बढ़ा दिया। मैंने 01.01.1992 से दो वर्ष तक काम किया। यह कहना गलत है कि मैंने टुकड़ों में काम किया हो बल्कि मैंने लगातार काम किया। प्रार्थी ने आगे प्रतिपरीक्षा में कहा है कि मुझे यह पता नहीं कि वहां कार्य समाप्त होने पर मेरी सेवाएं समाप्त कर दी गई हो। मुझे सेवा समाप्ति का आदेश नहीं दिया। यह कहना गलत है कि सेवा समाप्ति पर मुझे एक माह के वेतन, छंटनी मुआवजा दिया हो और उसे मैंने लिया हो। यह कहना भी गलत है कि मैंने 240 दिन काम नहीं किया हो मैंने तो 700 दिन से भी अधिक काम किया है।

16. इसके विपरीत अप्रार्थी के साक्षी श्री जे०पी० अग्रवाल ने अपनी साक्ष्य में यह कहा है कि प्रार्थी को आकस्मिक ड्राइवर के तौर पर पूर्णतया अस्थाई तौर पर केन्द्र के निर्माण तक उच्च (एचपीटी) शक्ति प्रेषिण रामगढ़ पर लगाया गया था। प्रार्थी को पूर्णतया अस्थाई तौर पर 01.01.1992 से 12.10.1992 तक सीमित अवधि अथवा प्रोजेक्ट पूरा होने तक जो भी पहले हो तक के लिए कार्य पर लगाया गया था। साक्षी ने आगे कहा है कि प्रार्थी को 01.01.1992 से 12.10.1992 तक आकस्मिक श्रमिक के तौर पर तथा उसके पश्चात् 13.10.1992 से 15.11.1994 तक वर्कचार्ज कर्मचारी के तौर पर कार्य पर लगाया गया था। प्रार्थी ने अप्रार्थीगण के अधीन कभी भी निरन्तर कार्य नहीं किया बल्कि कार्य की आवश्यकता के आधार पर ही कार्य किया। साक्षी ने यह भी कहा है कि अप्रार्थीगण के अधीन न तो ड्राइवर का कोई पद स्वीकृत था न ही अप्रार्थीगण को नियमित ड्राइवर की आवश्यकता थी। केवल उच्च शक्ति प्रेषित्र केन्द्र के निर्माण के दौरान अत्यावश्यक कार्य के निष्पादन के उद्देश्य से प्रार्थी को कार्य पर लगाया गया। उक्त केन्द्र के निर्माण का कार्य पूरा होने पर अप्रार्थीगण का कार्य समाप्त हो गया अतः प्रार्थी की सेवायें उसे मुआवजा राशि व छंटनी राशि प्रदान कर विधिवत् समाप्त कर दी गई। प्रतिपरीक्षा में इस साक्षी ने कहा है कि बाबूखों से हमारे ऑफिस रिकार्ड के अनुसार ड्राइवर का काम लिया गया था। प्रार्थी को वर्ष 1992 से 1994-95 के बीच हमारी योजना में कार्य की आवश्यकता अनुसार ड्राइवर के काम के लिए दैनिक श्रमिक के रूप में रखा था। अजखुद कहा कि प्रार्थी को इन्सटालेशन प्रोजेक्ट ऑफिस के द्वारा रखा गया था। यह सही है कि प्रार्थी को अस्थाई तौर पर रखा गया था। यह सही है कि प्रार्थी को शुरू में तीन माह के लिए प्रदर्श-3 के तहत रखा था। यह कहना गलत है कि प्रार्थी ने कलेण्डर वर्ष में 240 दिन से अधिक कार्य किया हो। प्रार्थी को भुगतान रिसीप्ट लेकर दिया जाता था। रिसीप्ट भुगतान ऑफिसर द्वारा ली जाती थी वो ही रिकार्ड में न्युन करता था। प्रार्थी को भुगतान मासिक व पाक्षिक होता था। भुगतान मस्टर रोल पर साइन करवा कर दिया जाता था। साक्षी ने आगे प्रतिपरीक्षा में कहा है कि मुझे नहीं मालूम कि प्रार्थी को 01.12.1992 से 31.12.1992 में भुगतान 1780/- व 01.03.1993 से 31.03.1993 को भुगतान 1779/- किस

आधार पर किया गया। यह बात सही है कि प्रार्थी को सेवा समाप्ति पर छंटनी मुआवजा व नोटिस पे दिया गया था। प्रार्थी को वाहन चालक के रूप में रखा था। आकस्मिक ड्राइवर व आकस्मिक श्रमिक की परिभाषा के बारे में पूर्ण जानकारी नहीं है। यह कहना गलत है कि प्रार्थी की सेवाएं बिना विधिक प्रावधानों की पालना व बिना छंटनी मुआवजा दिए की गई हो।

17. प्रार्थी का यह कथन रहा है कि उसे अप्रार्थीगण के द्वारा 01.01.1992 को ड्राइवर के पद पर नियुक्त किया तथा 06.06.1994 को मौखिक रूप से सेवापृथक कर दिया। इसके विपरीत अप्रार्थीगण का यह कथन रहा है कि प्रार्थी को 01.01.1992 से 12.10.1992 तक सीमित अवधि अथवा प्रोजेक्ट पूरा होने तक जो भी पहले हो तक के लिए ड्राइवर के पद पर लगाया गया था। तत्पश्चात् 13.10.1992 से 15.11.1994 तक वर्कचार्ज कर्मचारी के तौर पर कार्य पर लगाया गया। प्रार्थी ने अपनी प्रतिपरीक्षा में इस तथ्य को स्वीकार किया है कि उसे 01.01.1992 को ड्राइवर के पद पर लिखित आदेश से लगाया गया। उसने यह भी कहा है कि लिखित में जो आदेश दिया वो उसने पेश कर दिया है। अब यदि प्रार्थी द्वारा प्रस्तुत दस्तावेजात को देखें तो प्रदर्श-2 ज्ञापन दिनांक 09.10.1992 के द्वारा प्रार्थी की नियुक्ति वेतन श्रृंखला में तीन माह के लिए वाहन चालक के रूप में 31.12.1992 तक की गई है। इस आदेश में स्पष्ट रूप से यह उल्लेखित किया गया है कि 31.12.1992 के पश्चात् उनकी सेवाएं भंग अथवा समाप्त समझी जाएंगी। इस आदेश में यह भी शर्त अंकित है कि उनकी नियुक्ति पूर्णतया अस्थायी हैसियत से होगी और वे किसी भी अवस्था में नियमित आधार पर नौकरी में बने रहने या सेवा पुष्टि के हकदार नहीं होंगे तथा उनकी सेवाएं बिना कोई नोटिस दिए और बिना कारण बताए कभी समाप्त की जा सकती हैं। तत्पश्चात् प्रार्थी की सेवाएं कार्यालय आदेश दिनांक 23.11.1992 प्रदर्श-4 के द्वारा ज्ञापन दिनांक 09.10.1992 में अंकित शर्तों के अनुसरण में दिनांक 13.10.1992 से 31.12.1992 तक की अवधि या परियोजना के पूरा होने तक इसमें जो भी पहले हो, के लिए नियुक्त किया गया। तत्पश्चात् प्रार्थी की सेवाएं कार्यालय आदेश दिनांक 13.10.1994 प्रदर्श-5 के जरिये 01.10.1994 से 15.11.1994 तक बढ़ाई गई व अन्त में प्रदर्श-2 के जरिये प्रार्थी की सेवाएं दिनांक 15.11.1994 से समाप्त की गई। अप्रार्थीगण के साक्षी ने अपनी प्रतिपरीक्षा में यह कहा है कि प्रार्थी को वर्ष 1992 से 1994-95 के बीच हमारे योजना में कार्य की आवश्यकता अनुसार ड्राइवर के काम के लिए दैनिक श्रमिक के रूप में रखा था। इस साक्षी ने यह भी कहा है कि प्रार्थी ने एक कलेण्डर वर्ष में लगातार 240 दिन कार्य नहीं किया। सेवा समाप्ति से पूर्व के एक कलेण्डर वर्ष में लगातार 240 दिन कार्य करने के संबंध में इस गवाह से न तो प्रार्थी की ओर से अन्य कोई दस्तावेज तलब कराये गये हैं न ही प्रतिपरीक्षा में अन्य कोई सुझाव रखा गया है कि कौन से दस्तावेजात इस गवाह ने जानबूझकर पेश नहीं किये हैं। स्वयं प्रार्थी की ओर से अपने साक्ष्य में ऐसे किसी तिथि का उल्लेख नहीं किया गया है कि उसने किस माह में कितने दिन कार्य इस प्रकार प्रार्थी ने जो मौखिक व प्रलेखीय साक्ष्य पत्रावली पर प्रस्तुत की है उससे यह प्रमाणित नहीं होता है कि उसने अप्रार्थीगण के अधीन दिनांक 01.01.1992 से 15.11.1994 तक निरन्तर कार्य किया अथवा सेवा समाप्ति की तिथि 15.11.1994 से पूर्व के एक कलेण्डर वर्ष में लगातार 240 दिन या इससे अधिक कार्य किया। प्रार्थी द्वारा प्रस्तुत न्यायिक

दृष्टांत Ramesh Kumar V. State of Haryana (2010) 2 Supreme Court Cases 543 में यह मामला यह था कि जिस श्रमिक ने 240 दिन की सेवा पूरी कर ली है उसे बिना नोटिस दिये तथा बिना धारा 25-एफ के प्रावधानों की पालना किये सेवा से नहीं हटाया जा सकता। जैसा कि हमने ऊपर विवेचित किया है कि प्रार्थी यह प्रमाणित करने में असफल रहा है कि उसने सेवा समाप्ति से पूर्व के एक कलेण्डर वर्ष में 240 दिन निरन्तर कार्य किया। ऐसी स्थिति में प्रार्थी प्रतिनिधि द्वारा प्रस्तुत न्यायिक दृष्टांत से प्रार्थी को कोई सहायता नहीं मिलती है।

18. इस संबंध में न्यायिक दृष्टांत Supreme Court of India Appeal (Civil) 6383 of 2005 Surendranagar Distt. Panchayat & Anr. V. Gangaben Laljibhai & Ors. dated 3.7.2006 में माननीय सर्वोच्च न्यायालय के अनेकों न्यायिक दृष्टांतों का हवाला देते हुए इस बात को कहा गया है कि श्रमिक को यह बात प्रमाणित करनी होगी कि उसने 240 दिन का कार्य कर लिया है। इस न्यायिक दृष्टांत में न्यायिक दृष्टांत 2005 (5) सुप्रीम कोर्ट कैसेज 100 मैनेजर रिजर्व बैंक ऑफ इंडिया बैंगलोर बनाम एस० मनी व अन्य तीन न्यायमूर्तीगण के द्वारा निर्णय पारित किया गया का भी हवाला दिया गया है और कहा गया है कि प्रारम्भिक सबूत का भार कि श्रमिक ने 240 दिन कार्य कर लिया है, श्रमिक पर ही होगा।

19. वर्तमान मामले में प्रार्थी बाबू खॉ ने प्रारम्भिक तौर पर भी इस बात को प्रमाणित नहीं किया है कि उसने अप्रार्थीगण के नियोजन में 240 दिन से अधिक कार्य किया है।

20. यहां यह भी उल्लेख करना उचित होगा कि प्रार्थी ने अपना वेतन 3000/- रुपये प्रतिमाह बताया है लेकिन उक्त वेतन के संबंध में प्रार्थी ने कोई दस्तावेजी साक्ष्य प्रस्तुत नहीं की है न ही अप्रार्थीगण से तलब करवाई है। इसके विपरीत अप्रार्थीगण की ओर से प्रदर्श ए-8 प्रार्थी को भुगतान की गई राशि का वाऊचर प्रस्तुत किया गया है जिसके अवलोकन से यह स्पष्ट होता है कि प्रार्थी का वेतन 950/- रुपये तथा डीए 788/- रुपये व एच०आर०ए 50/- रुपये कुल 1770/- रुपये का भुगतान नवम्बर 1992 में किया गया है तथा इसी प्रकार दिसम्बर 1992 में 1789/- रुपये, मार्च 1993 में 1788/- रुपये, अप्रैल 1993 में 1789/- रुपये व मई 1993 में 1874/- रुपये का भुगतान प्रतिमाह वेतन के रूप में प्रार्थी को किया गया है। इस प्रकार यह प्रकट होता है कि प्रार्थी असत्य कथन कर रहा है कि उसका वेतन 3000/- रुपये प्रतिमाह था। ऐसी स्थिति में मेरे विनम्र मत् में असत्य कथन वाले व्यक्ति को साम्या के सिद्धांत के अनुसार कोई लाभ प्रदान नहीं किया जा सकता। प्रार्थी स्वच्छ हाथों से न्यायालय के समक्ष नहीं आया है और उसने असत्य कथन न्यायालय के समक्ष किये हैं।

21. न्यायिक दृष्टांत A.I.R. 2006 S.C. 1806 Secretary, State of Karnataka and others Vs. Umadevi and others के मामले में माननीय सर्वोच्च न्यायालय के द्वारा इस बात को स्पष्ट कर दिया गया है कि संविदा के अंतर्गत नियुक्त अथवा दैनिक वेतन भोगी कर्मचारी की नियुक्ति नियमित नियुक्ति नहीं है। उनकी नियुक्ति संविदा समाप्त होने पर अथवा दैनिक वेतन भोगी कर्मचारी की नियुक्ति समाप्त किये जाने पर समाप्त हो जाती है। इस प्रकार के कर्मचारी को कोई अधिकार प्राप्त नहीं

होते हैं। माननीय सर्वोच्च न्यायालय के द्वारा इसे संबंध में निम्न मत व्यक्त किया है:-

"Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Art. 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which is described as 'litigious employment', he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. (Para 34)".

उक्त न्यायिक दृष्टांत के प्रकाश में भी यदि प्रार्थी का मामला देखा जाए तो प्रार्थी को जो नियुक्ति आदेश अप्रार्थीगण द्वारा जारी किये गये हैं उनमें स्पष्ट रूप से यह अंकित किया गया है कि प्रार्थी की नियुक्ति किस तिथि तक की अवधि के लिए होगी तथा उसके पश्चात् उसकी सेवाएं भंग अथवा समाप्त समझी जाएंगी। यह भी शर्त अंकित है कि उसकी नियुक्ति

पूर्णतया अस्थाई हैसियत से होगी और वह किसी भी अवस्था में नियमित आधार पर नौकरी में बने रहने या सेवा पुष्टि का हकदार नहीं होगा तथा उसकी सेवाएं बिना किसी नोटिस दिए और बिना कोई कारण बताए कभी समाप्त की जा सकती हैं। उक्त आधार पर भी मेरे विनम्र मत में प्रार्थी कोई राहत प्राप्त करने का अधिकारी नहीं है।

22. यहां यह उल्लेख करना उचित होगा कि इस न्यायालय को जो रेफरेन्स श्रम मंत्रालय भारत सरकार ने प्रेषित किया है उसमें सेवा समाप्ति की तिथि 15.11.1994 दर्शाई गई है जबकि प्रार्थी ने अपने मांग-पत्र व शपथ-पत्र में सेवा समाप्ति की तिथि 06.06.1994 बताई है। प्रार्थी का यह कथन रहा है कि उसे अप्रार्थीगण ने दिनांक 06.06.1994 को बिना कोई नोटिस, नोटिस वेतन व छंटनी मुआवजा दिये सेवा से मौखिक रूप से सेवा से पृथक् कर दिया। इसके विपरीत स्वयं प्रार्थी ने प्रदर्श-6 सेवा समाप्ति के संबंध में क्षतिपूर्ति स्वीकृति आदेश पेश किया है जिसके अवलोकन से यह स्पष्ट है कि प्रार्थी को क्षतिपूर्ति राशि 2106/- का भुगतान का आदेश दिया गया है व 15.11.1994 से सेवा समाप्त करना बताया गया है। अप्रार्थीगण के साक्षी श्री जे०पी० अग्रवाल ने अपनी प्रतिपरीक्षा में भी इस बात को कहा है कि यह बात सही है कि प्रार्थी को सेवा समाप्ति पर छंटनी मुआवजा व नोटिस पे दिया गया था। इस तथ्य की पुष्टि स्वयं प्रार्थी की ओर से प्रस्तुत एस०बी० सिविल रिट पिटीशन नम्बर 3934/2002 बाबू खां बनाम भारत संघ में पारित आदेश दिनांक 03.12.2004 प्रदर्श-7 से भी होती है जिसमें छंटनी मुआवजा दिये जाने

के तथ्य को स्वीकृत किया गया है। लेकिन अब प्रार्थी इस प्रकरण में यह कथन कर रहा है कि उसे सेवा समाप्ति से पूर्व छंटनी मुआवजा अदा नहीं किया गया। इस प्रकार प्रार्थी असत्य कथन कर रहा है तथा स्वयं के द्वारा प्रस्तुत दस्तावेजात के विपरीत कथन कर रहा है। इस प्रकार यह स्पष्ट है कि प्रार्थी की सेवा समाप्ति दिनांक 15.11.1994 को अप्रार्थीगण द्वारा विधिवत् रूप से छंटनी मुआवजा व नोटिस पे दी जाकर की गई है। ऐसी स्थिति में अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ या अन्य किसी प्रावधान का उल्लंघन किया जाना प्रमाणित नहीं होता है। उपरोक्त परिस्थितियों में मेरे विनम्र मत् में प्रार्थी अप्रार्थीगण से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

अधिनिर्णय

23. अतः यह अधिनिर्णीत किया जाता है कि :—

- (1) प्रार्थी श्रमिक श्री बाबू खाँ पुत्र सगते खाँ को अप्रार्थीगण द्वारा दिनांक 15.11.1994 को सेवामुक्त किया जाना अनुचित एवं अवैध नहीं है। इसलिये प्रार्थी कोई राहत एवं राशि प्राप्त करने का अधिकारी नहीं है।

24. इस अधिनिर्णय को प्रकाशनार्थ भारत सरकार को प्रेषित किया जावे।

25. यह अधिनिर्णय मेरे द्वारा लिपिबद्ध करवाया जाकर आज दिनांक 18.04.2013 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

अनूप कुमार सक्सैना, न्यायाधीश